April 21st 2-509 Judge Davis

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 216.

JAMES P. CARROLL, A. BAXTER SPRINGS, WILLIAM B. STANLEY, CHARLES LOGAN, AND ARTHUR W. KENNEDY, APPELLANTS,

—VS.—

JOSHUA AND THOMAS GREEN.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF SOUTH CAROLINA.

FILED AUGUST 6, 1874.

Reversed =

Swayne

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1 THE UNITED STATES OF AMERICA,
District of South Carolina, to wit:

At a circuit court of the United States for the fourth circuit in and for the district of South Carolina, begun and holden at Columbia, in the district aforesaid, on the fourth Monday in November, 1872, before the honorable Hugh L. Bond and the honorable George S. Bryan, judges of the said United States for the district of South Carolina, holding said circuit court according to the form of the act of Congress in such case made and provided, the following proceedings were had:

J. & T. GREEN, OF MISSISSIPPI,
against
CYRUS H. BALDWIN, RECEIVER OF THE Exchange Bank of Columbia, J. P. Carroll, L. D. Childs, et. al.

Be it remembered that heretofore, to wit, the 18th day of June, in the year of our Lord one thousand eight hundred and seventy-two, the said J.
& T. Green, of Mississip'i, impleaded the said Cyrus H. Baldwin,
2 receiver of the Exchange Bank of Columbia, J. P. Carroll, L. D.
Childs, et. al., in a bill of complaint, as follows:

Bill.

THE UNITED STATES OF AMERICA:

South Carolina district. Fourth circuit. In equity.

To the honorable the judges of the circuit court of the United States for the district of South Carolina:

Joshua Green and Thomas Green, citizens of the State of Mississippi, trading under the firm-name of J. & T. Green, bankers, bring this their bill of complaint in behalf of themselves and of all other holders of bank-bills issued by the president, directors, and company of the Exchange Bank of Columbia, which shall remain unpaid, who shall come in and contribute to the expense of this suit, against Cyrus H. Baldwin, a citizen of the State of South Carolina and receiver of the Exchange Bank of Columbia, J. P. Carroll, L D. Childs, Thomas J. Robertson; Miranda Scarborough, administratrix of the estate of William Scarborough, deceased; Maximilian La Borde, Elizabeth L. Hayne; Charles Alston, sen.,
and William Alston Pringle, executors of the estate of Arthur P.
3 Hayne, deceased; Cyrus H. Baldwin, W. A. Lovick; J. D. A. Kib-
ler and Ann Drafts, administrators of the estate of Jesse Drafts, deceased; all citizens of the State of South Carolina, and Jacob E. Lyon, a citizen of the State of Pennsylvania.

And therefore your orators, Joshua Green and Thomas Green complaining, say:

I. That the Exchange Bank of Columbia was a corporation created by and under the laws of the State of South Carolina, organized pursuant to an act of the general assembly of said State entitled "An act to recharter the Planters and Mechanics' Bank of South Carolina, the Union Bank of South Carolina, the Commercial Bank of Columbia, South Carolina, and to incorporate the Exchange Bank of Columbia, the Farmers' and Exchange Bank, and the People's Bank of Charleston, the Bank of Newberry, the Bank of Chester, the Bank of Sumterville, the Planters'

Bank of Fairfield, and the Western Bank of South Carolina at Anderson," passed December 16, 1852. That by the said act constituting the charter of said bank its capital was fixed at five hundred thousand dollars, and with the privilege of increasing it to one million; and said
bank was endowed with the same rights and privileges, and
4 subject to the same duties, liabilities, obligations, regulations, and
restrictions, provided for the said Planters and Mechanics' Bank,
&c. By the said charter the capital stock of said bank was divided into shares of twenty-five dollars each.

By the fourth section of the act above recited it is provided that, in case of the failure of the said bank, (Planters and Mechanics',) each stockholder, copartnership, or body-politic having a share or shares in such bank at the time of such failure, or who shall have been interested therein at any time within twelve months previous to such failure, shall be liable and held bound, individually, for any sum not exceeding twice the amount of his, her, or their share or shares.

II. That the said Exchange Bank of Columbia from time to time issued certain of its notes, called bank-notes, payable to bearer, in the form and of the denomination showed in the annexed schedule, marked "A," which is hereby referred to and made part of this complaint, and the said bills came into the hands of your orators in due course of trade, and they are lawful holders thereof.

III. That demand was duly made on the said bank of payment of the said bills, but the said bank refused to pay the same.

5 IV. That by an act of the general assembly of the State of
South Carolina entitled "An act to enable the banks of the State to resume business or to place them in liquidation," approved March 13th, 1869, it was provided in words as follows:

"SECTION 1. That all the banks incorporated by authority of this State, and which have by said authority issued bills of credit known as bank-bills, and have failed to comply with said corporate privileges by refusing to pay their bills of credit and are now thus failing to comply with the provisions of said act of incorporation in this particular, and shall so continue to violate said act until the 1st day of December, 1869, shall forfeit all corporate rights and privileges and are forbidden to transact any business as banking institution."

By the second section of the last-mentioned act it is provided that the judge of the circuit in which such bank or banks may be situated, upon notice given him of each and every bank failing to comply with the requirements of the first section of the same act, shall appoint a suitable person as receiver of each of the aforesaid banks, who, after having filed a bond, with good and sufficient security to be approved by said
judge, shall take charge of the property and assets of the bank.

6 V. That the said Exchange Bank of Columbia, some time pre-
vious to first day of December, 1862, failed to pay their bills of credit known as bank-bills, and continued so to fail to pay their bills of credit up to the first day of December, 1869. Subsequently, on the twenty-second day of December, A. D. 1869, in accordance with the provisions of the said act last mentioned, on the application of D. H. Chamberlain, attorney-general of said State, at chambers, in the city of Columbia, Cyrus H. Baldwin was, by an order made by honorable Lemuel Boozer, circuit judge of the fifth circuit of the said State, duly appointed receiver of the property and assets of the said bank, and that thereafter, and before the commencement of this action, he gave his bond as required by said order as such receiver.

VI. That on the twenty-sixth day of March, A. D. 1872, your orators caused to be presented for redemption five thousand and eighty-five dollars of the said bank-notes, and on the seventh day of June, 1872, two hundred and sixty dollars more of the said bank-notes, making in all five thousand three hundred and forty-five dollars, to the said receiver of said bank, in the city of Columbia, and also to J. P. Southern, 7 as last president, and Henry Scott, as last cashier thereof, and the payment of said notes has been by them refused.

VII. That on the first day of December, 1862, and indeed at an earlier period, the said Exchange Bank of Columbia had failed, being then indebted to an amount far exceeding its assets.

VIII. That in consequence of the failure of said bank, in accordance with the provisions of the said fourth section of the said act of December 16th, 1852, entitled "An act to recharter the Planters and Mechanics' Bank of South Carolina," etc., etc., the stockholders holding shares in said bank, or who had been interested therein within twelve months previous to said failure, became liable for the debts of the said bank for sums not exceeding twice the amount of their shares held by them respectively.

IX. That the following persons were holders of shares of said bank within twelve months previous to the said failure, or became holders of such shares subsequent to such failure, and before the first day of December, 1869, of the amounts set opposite their respective names, as follows:

J. P. Carroll held one hundred (100) shares, worth	$2,500 00
L. D. Childs held two hundred (200) shares, worth	5,000 00
Thomas J. Robertson held four hundred (400) shares, worth	10,000 00
8 William Scarborough, since deceased, of whose estate Miranda Scarborough is administratrix, held (50) shares, worth	$1,250 00
Maximilian La Borde held one hundred (100) shares, worth.	2,500 00
Jesse Drafts, since deceased, of whose estate W. A. Lovick, J. D. A. Kibler, and Ann Drafts, are administrators, held one hundred (100) shares, worth	2,500 00
Arthur P. Hayne, since deceased, of whose estate Elizabeth L. Hayne, Charles Alston, senr., William Alston Pringle, are qualified executors, held four hundred (400) shares, worth	10,000 00
Cyrus H. Baldwin held one hundred (100) shares, worth....	2,500 00
Jacob E. Lyon, held two hundred (200) shares, worth	5,000 00

X. Your orators further show that, after diligent inquiry, they have been unable to ascertain the names of other holders of shares of the capital stock of said Exchange Bank of Columbia, if any there were, and the number of shares held by them respectively. That the books of the said bank are not accessible to them, and they are, therefore, unable to insert the names of such persons in this bill of complaint as defendants, and they, therefore, pray that if hereafter the names of other stockholders of said bank should be ascertained who would 9 be proper defendants to this bill, they may have leave with apt words to charge them as such.

To the end, therefore, that the said defendants may, if they can, show why your orators should not have the relief hereby prayed, and may, upon their several and respective corporal oaths, and according to the best and utmost of their several and respective knowledge, remembrance, information, and belief, full, true, direct, and perfect answer make to such of the several interrogatories hereinafter numbered and set forth, as by the note hereunder written they are respectively required to answer, that is to say:

1. Whether the Exchange Bank of Columbia did not issue the bank-notes enumerated in the schedule, A, annexed to this complaint?

2. Whether the Exchange Bank of Columbia did not refuse, by its president and cashier, to pay the bank-notes enumerated in Schedule A, annexed to this complaint?

3. Whether the Exchange Bank of Columbia, on the first day of December, 1862, had not failed, and was not at that time indebted to an amount far exceeding its assets?

4. Whether he did not own, on the first day of December, 1862, or at any time within twelve months previous thereto, a share or shares; and, if so, how many, in the Exchange Bank of Columbia?

10 5. Whether, as holder of a share or shares of the capital stock of the Exchange Bank of Columbia, he transferred between the first day of December, 1862, and the twenty-second day of December, 1869, a share or shares of the capital stock of the said bank; and, if so, how many, and to whom?

6. Whether he acquired as absolute owner, or as a trustee or pledgee, between the first day of December, 1862, and the twenty-second day of December, 1869, a share or shares; and, if so, how many, of the capital stock of the said Exchange Bank of Columbia, and from whom was the said share or shares obtained?

7. Whether he did not hold, on the first day of December, 1862, or at any time within twelve months previous thereto, as a trustee or guardian, or in any other fiduciary capacity, or as a pledgee, a share or shares; and, if so, how many, in the Exchange Bank of Columbia?

8. Whether the person for whose estate he or she may be the executor or executrix, administrator or administratrix, did not, on the first day of December, 1862, or at any time within twelve months previous thereto, or between the first day of December, 1862, and the twenty-second day of December, 1869, own a share or shares, and, if so, how many, in the Exchange Bank of Columbia.

11 9. Whether he is the receiver of the Exchange Bank of Columbia; and, if so, what assets, if any, of the said bank he has in his possession, and the value of the same, and, also, whether he did not refuse payment of the bills of said bank enumerated in Schedule A?

And, further, that the said defendants, stockholders, and the legal representatives of stockholders of the said Exchange Bank of Columbia, be decreed to pay unto your orators the sum of fifty dollars upon each share of the capital stock held by them respectively on the first day of December, 1862, or within twelve months previous thereto, or who acquired such shares between the first day of December, 1862, and the twenty-second day of December, 1869, or such a portion of such sum as shall be sufficient to pay the just and legal demands of your orators.

And that your orators may have such further and other relief in the premises as the nature of the circumstances of this case may require and to your honors shall seem meet.

May it please your honors to grant unto your orators your writ of subpœna, to be directed to the said Cyrus H. Baldwin, receiver of the Exhange
Bank of Columbia; J P. Carroll, L D. Childs, Thomas
12 J. Robertson, Miranda Scarborough, administratrix of the estate
of William Scarborough, deceased; Maximilian La Borde, Eliza-

beth L. Hayne, Charles Alston, sr., and William Alston Pringle, executors of the estate of Arthur P. Hayne, deceased; Cyrus H. Baldwin, W. A. Lovick, J. D. A. Kibler and Ann Drafts, administrators of the estate of Jesse Drafts, and Jacob E. Lyon, commanding them, on a certain day and under a certain penalty, to be therein named, to be and appear before your honors in this honorable court, then and there true, direct, and perfect answer make to all and singular the premises, and to abide and perform such further order and decree in the premises as to your honors shall seem meet.

And your orators will ever pray, etc.

CORBIN & STONE,
Orators' Solicitors.

NOTE.—The defendant Cyrus H. Baldwin is required to answer the interrogatories, numbered, respectively 1, 2, 3, 4, 6, 7 and 9.

The defendants J P. Carroll, L D. Childs, Thomas J. Robertson, Maximilian La Borde, and Jacob E. Lyon are required to answer the interrogatories numbered 1, 3, 4, 5, 6 and 7.

The defendants Miranda Scarborough, Elizabeth L. Hayne, Charles Alston, sr., and William Alston Pringle, W. A. Lovick, J. D. A. 13 Kibler, and Ann Drafts are required to answer the interrogatories numbered 8.

SCHEDULE A.

Notes held by J. & T. Green, issued by the Exchange Bank of Columbia.

Three (3) bills for one hundred dollars each, in form as follows $300

A.] STATE OF SOUTH CAROLINA. [No. 218.

On demand, the Exchange Bank of Columbia will pay one hundred dollars to J. Smith or bearer.

Columbia, Sept. 20, 1853.

JAS. S. SCOTT, *Cashier.*

JAMES V. LYLES, *President.*

Other two notes, similar in form to the above, but of different numbers and dates; one of the notes issued January 5, 1860, signed by Jesse Drafts, cashier, and Rufus M. Johnson, president.

Four bills, for fifty dollars each, in form as follows......... $200 00

A.] SOUTH CAROLINA. [No. 246.

The Exchange Bank of Columbia will pay fifty dollars on demand, to the bearer.

Columbia, Nov. 11, 1853.

JAS. S. SCOTT, *Cashier.*

JAMES V. LYLES, *President.*

Other three notes, similar in form to the above, but of different number and dates; one of said notes issued January 5, 1860, is signed by Jesse Drafts, cashier, and Rufus M. Johnson, president.

14 Fifty-four bills of twenty dollars each, in the following form $1,080 00

State of South Carolina. [No. 408. B.

The Exchange Bank of Columbia will pay twenty dollars to bearer, on demand.

Columbia, Nov. 10, 1853.

JAS. S. SCOTT, *Cashier.*

James V. Lyles, *President.*

Other bills, in like form to the above, but of different numbers and various dates, between September, 1853, and December, 1859. Some of said bills are signed by Jesse Drafts, as cashier, and Rufus M. Johnson, as president, instead of by Jas. S. Scott and James V. Lyles.

One hundred and eighty-two bills for ten dollars each, in the following form $1,820 00

D.] South Carolina. [D.

No. 312.] The Exchange Bank of Columbia will [No. 312.
pay ten dollars to bearer, on demand.

Columbia, Oct. 17, 1854.

JAS. S. SCOTT, *Cashier.*

James V. Lyles, *President.*

Other bills, in like form to above, but of different numbers and various dates, between September 3, 1853, and October 17, 1854.

Three hundred and eighty-seven bills for five dollars each, in following form $1,945 00

No. 797.] The Exchange Bank of Columbia [D.
will pay five dollars, on demand.

South Carolina.

Columbia, August 4, 1854.

Jas S. Scott, *Cashier.*

JAMES V. LYLES,
President.

15 Other bills, of a similar form, with exception that numbers are different and dates are various, being between September 1, 1853, and October, 1854.

$5,345 00

CORBIN & STONE,
Complainants' Solicitors.

And on the same day, to wit, the 18th day of June, A. D. 1872, the said complainant sued out of said court a process of subpœna against the defendants in said bill, which said subpœna, together with the marshal's return thereon, are in words and figures following, to wit:

Subpœna.

UNITED STATES OF AMERICA,
Fourth Circuit, State of South Carolina:

The President of the United States of America to Cyrus H. Baldwin, a citizen of the State of South Carolina, receiver of the Exchange Bank of Columbia; J. P. Carrol, L. D. Childs, Thomas J. Martin, Miranda Scarborough, administrator of the estate of Wm. Scarborough; Maximilian La Borde, Elizabeth L. Hayne, Charles Alston, senr., and Wm. Alston Pringle, executors of the estate of Arthur P. Hayne; Cyrus H. Baldwin, Wm. A. Lovick, J. D. A. Kibler, and Ann Drafts, administrators of the estate of Jesse Drafts, all
16 citizens of the State of South Carolina, and Jacob E. Lyon, a citizen of the State of Pennsylvania:

You are hereby strictly commanded and firmly enjoined that, all manner of excuses being laid aside, you be and appear before the judges of the circuit court of the United States for the district of South Carolina, at Charleston, on the first Monday of August, twenty days after the service thereof, then and there true and perfect answer to make, upon your corporal oath, on the Holy Evangelists, to all such matters as shall be objected against you in the bill of complaint of Joshua Green and Thomas Green, citizens of the State of Mississippi, trading under the firm-name of J. & T. Green.

And also that you do, on the rules-day next immediately after the day appointed and expressed, file or cause to be filed in the registry of said court your plea, answer, or demurrer to the said bill of complaint.

Hereof fail not, under the pain of one hundred pounds.

Given under the seal of the said court.

Witness the honorable Salmon P. Chase Chief-Justice of the United States of America, at Charleston, in South Carolina district afore-
17 said, the third day of May, in the year of our Lord one thousand eight hundred and seventy-two, and in the ninety-sixth year of the sovereignty and Independance of the United States of America.

[SEAL.] CORBIN & STNE,
Complainants' Solicitor'.

DANL. HORLBECK,
C. C. U. S. for S. C.

MEMORANDUM.—The defendants are to enter their appearance in this suit in the clerk's office on or before the first Monday of August, 1872; otherwise the bill will be taken pro confesso.

Which subpœna was returned endorsed as follows:

I have executed the within process by serving personally C. H. Baldwin, T. J. Robertson, Maximilian La Borde, J. D. A. Kibler, Wm. A. Lovick, L. D. Childs, J. P. Carroll, each with copy of within subpœna on the 21st June, 1872.

Miranda Scarborough, N. E. I., out of State; no place of residence.

Mrs. Ann Drafts, N. E. I., dead.

JOHN B. HUBBARD,
Spec. Deputy.

I have executed the within process by serving personally Charles Alston, sr., & Wm. Alston Pringle each with a copy of within subpœna.

18 Elizabeth L. Hayne, N. E. I., dead.
June 28th, 1872.

H. W. HENDRICKS,
Spec. Dep. U. S. M.

And on the 9th day of July, A. D. 1872, came into court the said Thomas J. Robertson, by Jas. H. Rion, his solicitor, and filed his answer to the said bill of complaint; which answer is in words and of the tenor following:

Answer.

THE UNITED STATES OF AMERICA,
South Carolina District:

Fourth circuit. In equity. 1872.

The separate answer of Thomas J. Robertson, one of the defendants to the bill of complaint of Joshua Green and Thomas Green, citizens of the State of Mississippi, complainants, against this defendant and others.

This defendant, now and at all times hereafter saving and reserving to himself all manner of benefit and advantage of exception to the many errors and insufficiencies in said bill contained, for answer thereto,
or unto so much and such parts thereof as this defendant is ad-
19 vised is material or necessary for him to make answer unto, an-
swering, says:

I. That he admits that the Exchange Bank of Columbia was a corporation created by and under the laws of the State of South Carolina, organized pursuant to an act of the general assembly of said State entitled "An act to recharter the Planters and Mechanics' Bank of South Carolina, the Union Bank of South Carolina, the Commercial Bank of Columbia, South Carolina, and to incorporate the Exchange Bank of Columbia, the Farmers' and Exchange Bank, and the People's Bank of Charleston, the Bank of Newberry, the Bank of Chester, the Bank of Sumterville, the Planters' Bank of Fairfield, and the Western Bank of South Carolina, at Anderson," passed on the 16th day of December, A. D. 1852; and that said Exchange Bank of Columbia had such capital stock, was endowed with such rights and privileges, and was subject to such duties, liabilities, obligations, regulations, and restrictions, as are pointed out by paragraph I of said bill of complaint.

II. That he admits that the said Exchange Bank of Columbia did issue certain notes called bank-notes, payable to bearer; but this de-
fendant knows not, nor has he been informed, save by complain-
20 ant's said bill, and cannot set forth as to his belief or otherwise,
whether the said Exchange Bank of Columbia did or did not issue the bank-notes enumerated in the schedule, A, annexed to said bill; neither has defendant any knowledge the complainants were in possession of the bills of the said bank, as alleged in their bill, at the time of the commencement of this suit, nor whether the complainants are the rightful owners of said bills, as alleged by them, and he demands strict proof to be made of the said matters.

III. That this defendant was owner of one hundred shares of the stock of the said Exchange Bank of Columbia in May, A. D. 1862, all which stock he then sold; and that since said date he has not been the absolute owner, or acquired as trustee or pledgee any stock in the said bank.

IV. That in May, A. D. 1862, and for twelve months subsequent thereto, the said Exchange Bank of Columbia was solvent, and had not failed; and defendant believes that said bank was able to meet all its liabilities until some time in the year 1865.

V. And as to those parts of said bill of complaint wherein it

21 claimed that this defendant is liable to the complainants for the
bills of the said bank, this defendant, by protestation, not confessing any of the matters in said bill contained to be true, doth plead thereto, and for cause of plea doth say that the complainant hath recovered no judgment upon the said bills against the said Exchange Bank of Columbia.

VI. And for a further cause of plea in this behalf, by leave of the court for this purpose first had obtained, this defendant saith that the cause of action stated in the said bill did not accrue within four years before the exhibiting said bill.

VII. And for a further cause of plea in this behalf, by leave of the court for this purpose first had and obtained, this defendant saith that the complainants did not exhibit their bill within six months after the time this defendant became liable to the penalty imposed by the fourth section of the act of the general assembly referred to in said bill, had defendant been liable.

VIII. And for a further cause of plea in this behalf, by leave of the
court for this purpose first had and obtained, this defendant saith
22 that by the second section of the act entitled " An act to recharter
the Planters and Mechanics' Bank, the Commercial Bank of Columbia," &c., &c., passed on the 16th day of December, A. D. 1852, it is provided that the said Exchange Bank shall be subject to all the provisions of an act passed on the 18th day of December, A. D. 1840, entitled " An act to provide against the suspension of specie payment by the banks of this State," and by the fifth section of the first above-mentioned act it is also provided that " it shall not be lawful for the said [Exchange] bank, except in settlement with other banks, to pay or deliver in payment or satisfaction of any demand upon it, or by way of loan or discount, any bill, note, check, or other paper of any other bank ;" that the operation of the said second and fifth sections was suspended by an act of the general assembly passed on the 21st day of December, A. D. 1857, and continued to be suspended, by other subsequent acts, until the said Exchange Bank became insolvent and failed, whereby whatever liability may have been imposed upon this defendant by the
fourth section of the aforesaid act, passed on the 16th day of De-
23 cember, A. D. 1852, became and was in law removed and annulled.

IX. And for a further cause of plea in this behalf, by leave of the court for this purpose first had and obtained, this defendant saith that the assets of the said Exchange Bank have not yet been exhausted, nor has their value been ascertained.

X. And for a further cause of plea in this behalf, by leave of the court for this purpose first had and obtained, this defendant saith that it has not been ascertained what is the amount of the liabilities of the said Exchange Bank.

XI. And for a further cause of plea in this behalf, by leave of the court for this purpose first had and obtained, this defendant saith that on the thirteenth day of March, A. D. 1869, an act was passed by the general assembly of the State of South Carolina by which it was provided that unless the said Exchange Bank should on or before the 1st day of December, 1869, commence paying their bills of credit, agree to redeem their bills, and in other respects comply with the provisions of the act incorporating the said bank, it, the said bank, should forfeit all
corporate rights and privileges. That by said act all acts and
24 parts of acts inconsistent therewith were repealed. That the said
Exchange Bank did fail and has failed to pay its bills of credit, redeem its bills, and in any respect to comply with the provisions of the

act incorporating the bank before or on the said 1st day of December, A. D. 1869, or since. That the said act of the said general assembly in no manner or words provided for a continuation of the liability of stockholders of the said bank after the said forfeiture of its corporate rights and privileges.

XII. And for a further cause of plea in this behalf, by leave of the court for this purpose first had and obtained, this defendant saith that, as he has been informed and believes, the said complainants obtained the notes or bills of the said bank, now held by them, long after the said notes or bills had ceased to be redeemable for gold or silver, or to be current as money, for a price far below their par value, and probably not exceeding ten cents in the dollar; that the complainants are in no event entitled to recover more than they actually paid for the bank-bills
so held by them, with proper interest; and that the complainants
25 upon producing and making proof of the same should be required
to discover when, from whom, and at what price, the said bank-bills were obtained by them, provided said bills shall be proved to be genuine, and the complainants the lawful possessors thereof.

All which matters of plea, hereinbefore set forth, this defendant doth aver to be true, and he doth plead the same to so much of said bill as is hereinbefore pleaded to.

XIII. Further answering the residue of said bill, this defendant says that previous to the 16th day of April, A. D. 1870, the receiver of the said Exchange Bank of Columbia had redeemed a large amount of the bills of the said bank, and had deposited the same for safe-keeping with Messrs. Scott, Williams & Co., of Columbia; and on the night of the said day the vault of the said Scott, Williams & Co. was broken open and said bills stolen; wherefore this defendant submits that the complainants should be required to prove that their bills are not any of said stolen bills.

And this defendant denies, &c., without this that there is any other
matter, cause, or thing, in the said complainant's said bill of com-
26 plaint contained, material or necessary for this defendant to make
answer unto, and not herein and hereby well and sufficiently answered, confessed, traversed and avoided, or denied, as true to the knowledge or belief of this defendant; all which matters and things this defendant is ready and willing to aver, maintain, and prove as this honorable court shall direct, and humbly prays to be hence dismissed, with his reasonable costs and charges in this behalf most wrongfully sustained.

JAS. H. RION,
Defendant's Solicitor.

UNITED STATES OF AMERICA,
South Carolina District, County of Richland:

Personally appears Thomas J. Robertson, and makes oath that the matters and things stated in the foregoing answer and plea are true so far as the same are stated of his own knowledge, and that those matters which are therein stated on information and belief are true to the best of his information and belief.

T. J. ROBERTSON.

27 Sworn to and subscribed before me this 6th day of July, A. D. 1872.

ALBERT M. BOOZER,
United States Commissioner, District of South Carolina.

And on the 29th day of July, A. D. 1872, came into court the said James P. Carroll & Maximilian La Borde, by Jas. H. Rion, their solicitor, and filed their answer to the said bill of complaint; which answer is in words and of the tenor following:

Answer.

UNITED STATES OF AMERICA,
South Carolina District:

Fourth circuit. In equity. 1872.

The joint and several answer of James P. Carroll and Maximilian La Borde, two of the defendants to the bill of complaint of Joshua Green and Thomas Green, citizens of the State of Mississippi, complainants, against these defendants, and others.

These defendants, now and at all times hereafter saving and reserving to themselves all manner of benefit and advantage of exception to the many errors and insufficiencies in said bill of complaint contained, for answer thereto, or unto so much and such parts thereof as these defendants are advised is or are material or necessary for them to
28 make answer unto, they, answering, say:

I. That they admit that the Exchange Bank of Columbia was a corporation created by and under the laws of the State of South Carolina, organized pursuant to an act of the general assembly of said State entitled "An act to recharter the Planters' and Mechanics' Bank of South Carolina, the Union Bank of South Carolina, the Commercial Bank of Columbia, South Carolina, and to incorporate the Exchange Bank of Columbia, the Farmers' and Exchange Bank, and the People's Bank of Charleston, the Bank of Newberry, the Bank of Chester, the Bank of Sumterville, the Planters' Bank of Fairfield, and the Western Bank of South Carolina, at Anderson, passed on the 16th day of December, A. D. 1852; that said bank had such capital, was endowed with such rights and privileges, and was subject to such duties, liabilities, obligations, regulations, and restrictions as are mentioned in said bill of complaint, and that the fourth section of said act contained such provisions as are therein set forth.

II. That they admit that the said Exchange Bank did issue
29 certain notes called bank notes, payable to bearer; but these defendants know not, nor have they been informed, save by complainants' said bill, and cannot set forth as to their belief or otherwise, whether the said Exchange Bank of Columbia did or did not issue the bank-notes enumerated in the schedule, A, annexed to the bill; neither have these defendants any knowledge whether the complainants were in possession of the bills of the said bank, as alleged in their bill, at the time of the commencement of their suit, nor whether the complainants are the rightful owners of said bills; and they demand strict proof to be made of the same.

III. That these defendants know not, nor have they been informed save by complainants' said bill, that the Exchange Bank of Columbia had failed on the 1st day of December, A. D. 1862, and was indebted at that time to an amount far exceeding its assets, and therefore they cannot set forth the same, as to their belief or otherwise.

IV. Further answering, these defendants say that they owned, on the first day of December, A. D. 1862, the defendant James P. Carroll, two hundred shares of the capital-stock of the said Exchange Bank of

30 Columbia, and the defendant Maximilian la Borde, four hundred
and nineteen shares of said capital stock.

V. That as such holders of the aforementioned shares neither of these defendants ever transferred, between the 1st day of December, A. D. 1862, and the 22d day of December, A. D. 1869, any of the said shares to any person whomsoever.

VI. That the defendant Maximilian la Borde acquired as absolute owner, trustee, or pledgee, between the 1st day of December, A. D. 1862, and the 22d day of December, A. D. 1869, no shares whatever of the capital-stock of the said Exchange Bank of Columbia, and that the defendant James P. Carroll acquired as absolute owner, between the dates above mentioned, one hundred and sixty shares of the said capital stock, which said shares he obtained from Rufus M. Johnson.

VII. That these defendants did not hold, nor did either of them, on the 1st day of December, A. D. 1862, or at any time within twelve months previous thereto, as trustee, or guardian, or in any other fiduciary capacity, or as pledgee, any share or shares of the capital-stock of the said bank.

VIII. And as to so much of said bill wherein it is claimed that
31 these defendants are liable to the complainants for the bills of the
said Exchange Bank, these defendants, by protestation, not confessing any of the matters in said bill of complaint contained to be true, do plead thereto, and for cause of plea do say that the cause of action stated in the bill did not accrue within four years before the commencement of this action.

IX. And, for a further plea in this behalf, these defendants say that the complainants did not exhibit their bill within six months after the time that these defendants became liable to the penalty imposed by the fourth section of the act of the general assembly referred to in said bill, if they ever were liable.

X. And, for a further plea in this behalf, these defendants say that by the second section of the act entitled "An act to recharter the Planters' and Mechanics' Bank, the Commercial Bank of Columbia, &c., &c.," passed on the 16th day of December, A. D. 1852, it is provided that the said Exchange Bank "shall be subject to all the provisions of an act passed on the 18th day of December, A. D. 1840, entitled 'An act to
provide against the suspension of specie payment by the banks
32 of this State;'" and by the fifth section of the first above-mentioned act it is also provided "that it shall not be lawful for the said Exchange Bank, except in settlement with other banks, to pay or deliver in payment or satisfaction of any demand upon it, or by way of loan or discount, any bill, note, check, or other paper of any other bank." That the operation of the said second and fifth sections was suspended by an act of the general assembly passed on the 21st day of December, A. D. 1857, and continued to be suspended by other subsequent acts until the said Exchange Bank became insolvent and failed, whereby whatever liability may have been, if any was, imposed upon these defendants by the fourth section of the aforesaid act, passed on the 16th day of December, A. D. 1852, became and was in law removed and annulled.

XI. And, for a further plea in this behalf, these defendants say that the assets of the said Exchange Bank have not yet been exhausted, nor has their value been ascertained.

XII. And, for a further plea in this behalf, these defendants say
33 that it has not been ascertained what is the amount of the liabilities of the said bank.

XIII. And, for a further plea in this behalf, these defendants say that, on the 13th day of March, A. D. 1869, an act was passed by the general assembly by which it was provided that unless the said Exchange Bank should, on or before the first day of December, 1869, commence paying their bills of credit, agree to redeem their bills, and in other respects comply with the provisions of the act incorporating the said bank, it, the said bank, should forfeit all corporate rights and privileges; that by said act all acts and parts of acts inconsistent therewith were repealed; that the said Exchange Bank did fail and has failed to pay its bills of credit, redeem its bills, and in any respect to comply with the provisions of the act incorporating the said bank, before, or on the said 1st day of December, A. D. 1869, or ever since; that the said act of the general assembly in no manner or words provided for a continuation of the liability of stockholders of the said bank after the said forfeiture of its corporate rights and privileges.

XIV. And, for a further plea in this behalf, these defendants
34 say that, as these defendants have been informed and believe,
the said complainants obtained the notes or bills of the said bank now held by them long after the said notes or bills had ceased to be redeemable for gold or silver, or to be current as money, for a price far below their par value, and probably not exceeding ten cents in the dollar; that the complainants are in no event entitled to recover more than they actually paid for the bank bills so held by them, with proper interest; and that the complainants, upon producing and making proof of the same, should be required to discover when, from whom, and at what price the said bank-bills were obtained by them, provided said bills shall be proved to be genuine and the complainants the lawful possessors thereof.

XV. Further answering the residue of said bill, these defendants say that, as they are informed and believe, previous to the 16th day of April, A. D. 1870, the receiver of the said Exchange Bank of Columbia had in his custody a large amount of the bills of the said bank belonging to
sundry persons, and had deposited the same with Messrs. Scott,
35 Williams & Co. for safe-keeping, and on the night of the said
day the vault of the said Scott, Williams & Co. was broken open and said bills stolen; wherefore these defendants submit that the complainants should be required to prove that their bills are not any of the said stolen bills.

And these defendants deny, &c., without this that there is any other matter, cause, or thing in said complainants' said bill of complaint contained material or necessary for these defendants to make answer unto, and not herein and hereby well and sufficiently answered, confessed, traversed, and avoided, or denied, is true to the knowledge or belief of these defendants, all which matters and things these defendants are ready and willing to aver, maintain, and prove as this honorable court shall direct, and humbly pray to be hence dismissed, with his reasonable costs and charges in this behalf most wrongfully sustained.

JAS. H. RION,
Solicitor for J. P. Carroll & M. La Borde, Defendants.

UNITED STATES OF AMERICA,
State of South Carolina, Richland County:

36 Personally appear James P. Carroll and Maximilian La Borde,
the defendants above named, who being severally duly sworn, say, each for himself, that the matters and things stated in the foregoing answer are true, so far as the same are stated of his own knowl-

edge, and that the matters and things therein stated on information and belief he believes to be true.

J. P. CARROLL.
M. LA BORDE.

Sworn to and subscribed before me this 26th day of July, A. D. 1872, the words "as they are informed & believe" and "in his custody" being first interlined, & the word "redeemed" first erased.

THOMAS J. LA MOTTE,
Notary Public and U. S. Com's'r, S. C. Dist.

And on the 7th day of March, A. D. 1873, came into court the said J. P. Carroll and M. La Borde, by Jas. H. Rion, their solicitor, and filed an amendment to their answer; which amendment is in words and of the tenor following:

Amendment to answer.

37 Amendment of answer of James P. Carroll, and Maximilian La Borde, two of the defendants in the cause of J. & T. Green, of Mississippi, against Cyrus H. Baldwin, receiver of the Exchange Bank of Columbia, J. P. Carroll, L. D. Childs, et al., by inserting the following paragraph:

"Further answering the residue of said bill of complaint, these defendants say that previous to the 16th day of April, A. D. 1870, there had been redeemed a large amount of the bills of the said bank, so that, with the exception of such bills as were retained by the stockholders for their own protection, there were not outstanding and unredeemed of said bills exceeding the sum of five thousand dollars; that the said bills so redeemed had been deposited for safe-keeping with Mes'rs. Scott, Williams & Co., of Columbia; that on the night of the said 16th day of April, A. D. 1870, the vault of the said Mes'rs. Scott, Williams & Co. was broken, and the said redeemed bills were stolen therefrom; that the bills claimed by the complainants exceed in amount the said sum of five thousand dollars, and these defendants therefore demand that strict proof be made by the complainants as to the fact that their said bills (if any they have) have not been redeemed."

We consent to the foregoing amendment.

CORBIN & STONE.

MARCH 1, 1873.

38 And on the 30th day of July, A. D. 1872, came into court the said J. & T. Green, by Corbin & Stone, their solicitors, and obtained the following order for amendment of bill of complaint; which order is in words and of the tenor following:

Order for amendment of bill.

UNITED STATES OF AMERICA,
South Carolina District:

J. & T. GREEN, OF MISSISSIPPI,
against
CYRUS H. BALDWIN, RECEIVER OF THE EXchange Bank of Columbia, J. P. Carroll, L. D. Childs, et al.
} In equity.

On motion of Mes'rs. Corbin & Stone, complainants' solicitors, ordered

that the complainants have leave to amend their bill of complaint
by adding the names of the following persons as defendants in this suit,
viz: William Martin, executor of the estate of E. J. Arthur, deceased;
Mrs. Elizabeth L. Herndon, administratrix de bonis non of the estate of
Zachariah P. Herndon, deceased; J. P. Southern, A. W. Kennedy; C. D.
Melton, executor of the estate of John Bryce, deceased; William
39 Wallace, executor of the estate of Andrew Wallace, deceased;
William McGuinness, J. H. Kinard, Catharine McFie, F. W.
McMaster, William Wallace, W. B. Stanley, Andrew Crawford, J. W.
Parker, P. W. Chick, A. B. Springs, Lewis Levy, John English, and
Charles Logan, all citizens of the State of South Carolina, and that
subpœnas issue against the said persons as against the other defendants
named in the said bill.

That paragraph 9 of said bill of complaint be amended by adding to the same the following words:

E. J. Arthur, since deceased, of whose estate William Martin is executor, held one hundred (100) shares, worth	$2,500
Zachariah P. Herndon, since deceased, of whose estate Mrs. Elizabeth L. Herndon is administratrix de bonis non, held four hundred (400) shares, worth	10,000
J. P. Southern held four hundred (400) shares, worth	10,000
A. W. Kennedy held two hundred (200) shares, worth	5,000
John Bryce, since deceased, of whose estate C. D. Melton is executor, held four hundred (400) shares, worth	10,000
40 Andrew Wallace, since deceased, of whose estate William Wallace is executor, held four hundred (400) shares, worth	$10,000
William McGuinness held two hundred (200) shares, worth	5,000
J. H. Kinard held two hundred (200) shares, worth	5,000
Catherine McFie held three hundred (300) shares, worth	7,500
F. W. McMaster held two hundred (200) shares, worth	5,000
William Wallace held one hundred (100) shares, worth	2,500
W. B. Stanley held one hundred (100) shares, worth	2,500
Andrew Crawford held one hundred (100) shares, worth	2,500
J. W. Parker held one hundred (100) shares, worth	2,500
P. W. Chick held one hundred (100) shares, worth	2,500
A. B. Springs held two hundred (200) shares, worth	5,000
Lewis Levy held two hundred shares, worth	5,000
John English held one hundred shares, worth	2,500
Charles Logan held fifty (50) shares, worth	1,250

41 NOTE.—The defendants J. P. Southern, A. W. Kennedy, William McGuinness, J. H. Kinard, Catharine McFie, F. W. McMaster, William Wallace, W. B. Stanley, Andrew Crawford, J. W. Parker, P. W. Chick, A. B. Springs, Lewis Levy, John English, and Charles Logan are required to answer the interrogatories numbered 1, 3, 4, 5, 6, and 7.

The defendants William Martin, Elizabeth L. Herndon, C. D. Melton, and William Wallace, as executors, are required to answer the interrogatories numbered 8.

30th July, '72.

GEO. S. BRYAN,
U. S. Judge Dist. S. C.

And on the 1st day of August, A. D. 1872, came into court the said J. & T. Green, by Corbin & Stone, their solicitors, and filed the following amendment to their bill of complaint; which amendment is in words and of the tenor following:

Amendment to bill of complaint.

THE UNITED STATES OF AMERICA,
South Carolina District:

In the circuit court.

J. & T. GREEN, OF MISSISSIPPI,
vs.
CYRUS H. BALDWIN, RECEIVER, ET AL. } Amendment to bill of complaint.

42 Amendment to the bill of complaint filed herein, made by order of the court dated July 30, 1872.

On page 1 of the printed copy filed herein as the original bill of complaint, add the following names after "Jacob E. Lyon, a citizen of the State of Pennsylvania," viz:

William Martin, executor of the estate of E. J. Arthur, deceased; Mrs. Elizabeth L. Herndon, administratrix de bonis non of the estate of Zachariah P. Herndon, deceased; J. P. Southern, A. W. Kennedy; C. D. Melton, executor of the estate of John Bryce, deceased; William Wallace, executor of the estate of Andrew Wallace, deceased; William McGuinness, J. H. Kinard, Catharine McFie, F. W. McMaster, William Wallace, W. B. Stanley, Andrew Crawford, J. W. Parker, P. W. Chick, A. B. Springs, Lewis Levy, John English, and Charles Logan, all citizens of South Carolina.

At the end of paragraph IX of the said bill, page 5 of said printed copy, add the following as a part of said paragraph:

E. J. Arthur, since deceased, of whose estate William Martin is executor, held one hundred (100) shares, worth	$2,500 00
43 Zachariah P. Herndon, since deceased, of whose estate Mrs. Elizabeth L. Herndon is administratrix de bonis non, held four hundred (400) shares, worth	$10,000 00
J. P. Southern held four hundred (400) shares, worth	10,000 00
A. W. Kennedy held two hundred (200) shares, worth	5,000 00
John Bryce, since deceased, of whose estate C. D. Melton is executor, held four hundred (400) shares, worth	10,000 00
Andrew Wallace, since deceased, of whose estate William Wallace is executor, held four hundred (400) shares, worth	10,000 00
William M. McGuinness held two hundred (200) shares, worth	5,000 00
J. H. Kinard held two hundred (200) shares, worth	5,000 00
Catharine McFie held three hundred (300) shares, worth	7,500 00
F. W. McMaster held two hundred (200) shares, worth	5,000 00
William Wallace held one hundred (100) shares, worth	2,500 00
W. B. Stanley held one hundred (100) shares, worth	2,500 00
Andrew Crawford held one hundred shares, worth	2,500 00
J. W. Parker held one hundred shares, worth	2,500 00
44 P. W. Chick held one hundred (100) shares, worth	$2,500 00
A. B. Springs held two hundred (200) shares, worth	$5,000 00

Lewis Levy held two hundred (200) shares, worth	5,000 00
John English held one hundred (100) shares, worth	2,500 00
Charles Logan held fifty (50) shares, worth	1,250 00

To the prayer for subpœna, on page 7 of said printed bill, add, after the words "and Jacob E. Lyon," William Martin, executor of the estate of E. J. Arthur, deceased; Mrs. Elizabeth L. Herndon, administratrix de bonis non of the estate of Zachariah P. Herndon, deceased; J. P. Southern, A. W. Kennedy; C. D. Melton, executor of the estate of John Bryce, deceased; William Wallace, executor of the estate of Andrew Wallace, deceased; Williom McGuinness, J. H. Kinard, Catharine McFie, F. W. McMaster, William Wallace, W. B. Stanley, Andrew Crawford, J. W. Parker, P. W. Chick, A. B. Springs, Lewis Levy, John English, and Charles Logan.

CORBIN & STONE,
For Complts.

45 To the note at the bottom of page 7 add:

"The defendants J. P. Southern, A. W. Kennedy, William McGuinness, J. H. Kinard, Mrs. Catherine McFie, F. W. McMaster, William Wallace, W. B. Stanley, Andrew Crawford, J. W. Parker, P. W. Chick, A. B. Springs, Lewis Levy, John English, and Charles Logan are required to answer the interrogatories numbered 1, 3, 4, 5, 6, and 7.

"The defendants William Martin, Elizabeth L. Herndon, C. D. Melton, and William Wallace, as executors, are required to answer the interrogatories numbered 8."

CORBIN & STONE,
Compl'ts' Solicitors.

And on the same day, to wit, the 1st day of August, A. D. 1872, the said complainant sued out of said court a process of subpœna against the defendants in said bill; which said subpœna, together with the marshal's return thereon, are in words and figures following, to wit:

Subpœna.

UNITED STATES OF AMERICA,
Fourth Circuit, State of South Carolina:

46 The President of the United States of America to William Martin, executor of the estate of E. J. Arthur, deceased; Elizabeth L. Herndon, administratrix de bonis non of the estate of Zachariah P. Herndon, deceased; J. P. Southern, A. W. Kennedy, C. D. Melton, executor of the estate of John Bryce, deceased; William Wallace, executor of the estate of Andrew Wallace, deceased; William McGuinness, J. H. Kinnard, Catherine McFie, F. W. McMaster, William Wallace, W. B. Stanley, Andrew Crawford, J. W. Parker, P. W. Chick, A. B. Springs, Lewis Levy, John English, and Charles Logan, all citizens of the State of South Carolina:

You are hereby strictly commanded and firmly enjoined that, all manner of excuses being laid aside, you be and appear before the judges of the circuit court of the United States for the district of South Carolina, at Charleston, on the first Monday of September, twenty days after the service thereof, then and there true and perfect answer to make upon you' corporal oath on the Holy Evangelists to all such matters as shall be objected against you in the amended bill of complaint of J. & T. Green, citizens of Mississippi.

And also that you do, on the rules-day next immediately after the day appointed and expressed, file, or cause to be filed, in the registry of said court your plea, answer, or demur'er to the said bill of complaint. 47

Hereof fail not, under the pain of one hundred pounds.

Given under the seal of the said court.

Witness the honorable Salmon P. Chase, Chief-Justice of the United States of America, at Charleston, in South Carolina, district aforesaid, the thirty-first day of July in the year of our Lord one thousand eight hundred and seventy-two, and in the ninety-seventh year of the sovereignty and Independence of the United States of America.

[SEAL.]

CORBIN & STONE,
Complainants' Solicitor.

DAN'L HORLBECK,
C. C. C. U. S. for So. Ca.

MEMORANDUM.—The defendants are to enter their appearance in this suit in the clerk's office on or before the day at which the writ is returnable, otherwise the bill will be taken pro confesso.

CORBIN & STONE.

Which subpœna was returned endorsed as follows:

I certify that I have served writs of subpœna on the following-named parties: William Martin, C. D. Melton, J. P. Southern, A. W. Kennedy, J. H. Kinard, F. W. McMaster, W. B. Stanley, Andrew Crawford, J. W. Parker Charles Logan, John English, Lewis Levy, Wm. McGuinness, Catharine McFie, William Wallace, at Columbia, S. C., August 9th, 1872. 48

J. W. ANDERSON,
Dept. U. S. Marshal.

UNITED STATES MARSHAL'S OFFICE,
SOUTH CAROLINA DISTRICT,
Charleston, Aug. 5th, 1872.

I hereby depute A. A. Hammett to execute the within process.

R. M. WALLACE,
U. S. Marshal.

SPARTANBURG C. H., *Aug. 9th,* 1872.

I herby certify that I executed the within process by leaving a copy personally with Mrs. E. L. Herndon, at Spartanburg C. H., S. C., Aug. 9, '72.

A. A. HAMMETT,
Special Deputy.

UNITED STATES MARSHAL'S OFFICE,
SOUTH CAROLINA DISTRICT,
Charleston, Aug. 5th, 1872.

I hereby depute James Maloney to execute the within process.

R. M. WALLACE,
U. S. Marshal.

49 NEWBERRY, , 1872.

I hereby certify that I executed the within process by serving subpœna writ upon and delivering to P. A. Chick subpœna-ticket in cause J. & T. Green vs. Cyrus H. Baldwin, on the 12th day of August, 1872.

JAMES MALONEY,
Special Deputy.

UNITED STATES MARSHAL'S OFFICE,
SOUTH CAROLINA DISTRICT,
Charleston, Aug. 5, 1872.

I hereby depute R. L. Hope spec. deputy to execute the within process.

R. M. WALLACE,
U. S. Marshal.

YORKVILLE, S. C., 20 *Aug.*, 1872.

I hereby certify that I executed the within process by serving A. B. Springs personally with a copy of same, at his residence in York County, S. C., on the 19th day of August, 1872.

R. L. HOPE,
Special Deputy.

And on the 3rd day of August, came into court the said Cyrus H. Baldwin, by Pope & Haskell, his solicitors, and filed his answer as receiver, and personally, to the said bill of complaint; which answer
50 is in words and of the tenor following:

Answer.

UNITED STATES OF AMERICA,
South Carolina District:

Fourth circuit. In equity.

The answer of Cyrus H. Baldwin, for himself, and as receiver of the Exchange Bank of Columbia, a defendant personally and officially to the bill of complaint of Joshua Green and Thomas Green, citizens of the State of Mississippi, complainants, against this defendant and other defendants therein named.

This defendant, reserving to himself all benefit of exception to the said bill of complaint, for answer thereunto, answering, says, that he admits that the Exchange Bank of Columbia was incorporated under the laws of South Carolina, in pursuance of an act of assembly passed on the 16th day of December, anno Domini 1852, having such chartered rights, regulations, and restrictions as are contained in the said act, and correctly set forth, as defendant believes, in the said bill of complaint; that he admits the said bank did issue its notes, commonly called bank-notes, payable to bearer, but this defendant does not know, and there-
51 fore cannot admit, that the said bank did issue the notes referred to in the said bill and enumerated in Schedule A, exhibited with the said bill; nor has the defendant any knowledge whether said bills were in possession of complainants at the time of the filing of their said bills of complaint in this court, and defendant asks strict proof thereof.

This defendant does not know that the said bank failed on the 1st day of December, 1862, as set forth by complainants, with an indebtedness greatly exceeding its assets.

And this defendant, further answering, says that, according to his best recollection, he was not a stockholder in the said bank on the said first day of December, 1862, or at any time with' twelve months previous thereto. If he was such stockholder he has no memorandum thereof, and his shares, if any, were so small and inconsiderable that he now has no recollection of them, and he thinks he can safely say that he was not then a stockholder in the said bank. This defendant did acquire, some time in the year 1863, sixty-five shares of the capital stock of the said bank, which he acquired from .

And this defendant, further answering, says that he did not hold, on the said 1st day of December, 1862, or at any time within twelve
52 months previous thereto, as trustee or guardian or in any fiduciary relation whatsoever, any share or shares in the capital stock of the said bank. And this defendant, further answering, says, in answer to the 2nd interrogatory of the said bill, that he cannot answer the same, as he has no knowledge of the notes enumerated in Schedule A annexed to the said bill. And this defendant, answering to the 9th interrogatory of the said bill, as receiver of the Exchange Bank of Columbia, answers and says that he is such receiver, and hereunto files as an exhibit a schedule of the assets of the Exchange Bank in his hands as receiver on the 3rd day of May, 1872, as an answer to the said interrogatory; and as to so much of said interrogatory 9th as asks whether he did not refuse payment of the bills of the said bank enumerated in Schedule A, for answer thereto says if the notes in Schedule A are the notes presented to him, of which he has no knowledge, he did refuse payment of them, because, without giving any further reason, the time limited to which he could have made such payment had expired and his authority to make any payment had ceased. And as to so much of the said bill as seeks to hold this defendant personally for the bills of
53 the said bank, he, by protestation, not confessing any of the matters in the said bill contained to be true, and for a plea in that behalf, says:

First. That the cause of action did not accrue within four years from the filing of the said bill in this suit.

Second. For a further plea in that behalf defendant says that complainants did not exhibit their said bill within six months after the time that any supposed liability under the penalty imposed by the said act was supposed to have accrued by the 4th section of the act of assembly referred to in the said bill.

That for a further plea in that behalf defendant says that the operation of the second and fifth sections of the said act of the 16th December, anno Domini 1872, by which it is supposed that defendant has been rendered liable to certain penalties now sought to be enforced against this defendant, was suspended by the act of assembly passed on the 21st day of December, anno Domini 1857, and continued to be suspended by other subsequent acts until the said Exchange Bank became insolvent, whereby the supposed liability of defendant was in law removed or annulled.

Fourth. And for a further plea this defendant says that the 13th day of March, 1869, an act of assembly was passed providing in terms
54 that unless the said Exchange Bank should, by the 1st of December following, comply in all respects with the provisions of the act incorporating the said bank, it should forfeit all of its corporate rights and privileges; that by said act all acts and parts of acts inconsistent therewith were repealed; that the said Exchange Bank did fail to comply with the provisions of the said act incorporating the said bank by the time limited and ever since; that the said act of assembly

in no manner or words provided for the continuation of the liability of the stockholders of the said bank after the forfeiture of its corporate rights and privileges.

Fifth. And for a further plea defendant says that he is informed and believes that complainants obtained the notes or bills of the said bank now held by them long after they had ceased to be redeemable in gold or silver, or to be received or circulated as money, for a price far below their value, probably at ten cents on the dollar; that complainants are in no event entitled to recover more than they actually paid for said bills so held by them, with interest; and complainants, in making proof of said bills, should be required to discover whom, from whom, and at what price said bills were obtained by them, provided said
55 bills should prove to be genuine and the complainants the lawful possessors thereof.

And this defendant, further answering, says that he knows of his own knowledge that, previous to the 16th day of April, 1870, this defendant, as receiver of the said Exchange Bank of Columbia, had in his custody a large amount of the bills of the said bank belonging to sundry persons, and had deposited the same with Messrs. Scott, Williams & Co., of Columbia, for safe-keeping, and on the night of the said day the vault of the said Scott, Williams & Co. was broken open and said bills stolen. Therefore this defendant submits that the complainants should be required to prove that their bills are not any of the stolen bills.

And this defendant denies all unlawful combination, and prays to be hence dismissed with his reasonable costs and charges in this behalf most wrongfully sustained.

POPE & HASKELL,
Solrs. for Defendant C. H. Baldwin.

UNITED STATES OF AMERICA,
State of South Carolina, County of Richland:

56 Personally came C. H. Baldwin, the defendant above named who, upon oath, says that the matters and things stated in the foregoing answer are true whenever stated on his own knowledge, & whenever stated on information and belief he believes them to be true.

C. H. BALDWIN,
For self & Receiver.

Sworn to before me this 2nd August, 1872.

ALBERT M. BOOZER,
United States Commissioner, District of South Carolina.

Schedule of assets of the Exchange Bank of Columbia, S. C., remaining in the hands of H. C. Baldwin, receiver, on the 3d May, 1872.

	United States currency	1,210 29	
	Note of Judge Moses, spc. to be good	400 00	
	Judgment in North Carolina, do	300 00	
			1,910 29
Worthless.	Confederate securities	308,772 00	
	No. Ca. bonds, confederate issue	6,000 00	
	So. Ca. " " "	5,800 00	
			320,572 00

Notes of sundry persons discounted and uncollectable after full trial:

Worthless.	Wm. J. Taylor, 7 Jan., '61	4,000 00	
	do. 15 Feb., '62	10,000 00	
	do. 15 Mar., '62	12,380 66	
	Jno. Campbell, Feb. 9, '59	500 00	
57	Richd. Anderson, Feb. 24, '57	4,000 00	
	Cook & Co., June 10, '61	545 00	
	J. K. Brown, Nov. 1, '60	2,405 85	
	M. Lilienthal, Dec. 24, '64	3,000 00	
	L. C. Clarke, June 23, '65	10,000 00	
	Lam, Bryce & Co., Oct. 1, '60	1,682 32	
	M. R. Clark, June 26th, '65	8,000 00	
	Lyles & Anderson, Oct. 29, '61	238 63	
	E. H. Britton, " 21, '56	650 00	
	R. G. Gladney, Jan. 4, '61	1,000 00	
	T. P. Walker, Mar. 3, '57	300 00	
	S. W. Rowan, July 29, 64	1,000 00	
	Robt. Cathcart, Oct. 4, '54	4,000 00	
	M. R. Singleton, Mar. 15, '54	4,000 00	
	L. N. Williams, Sept. 26, '64	3,000 00	
	J. B. Glass, Oct. 4, '54	15,000 00	
	Jas. R. Heise, Dec. 23, '64	5,000 00	
	Thos. Wade, Dec. 15, '64	1,000 00	
	Do., Jan. 17, '65	500 00	
	Jas. M. Suber, Nov. 5, '61	75 00	
	David Goss, May 28, '61	300 00	
	W. H. Thompson, June 5, '60	2,235 61	
	John G. Brown, Nov. 4, '63	2,000 00	
	Scruggs, Dagan & Co., Oct. 18, '61	11,432 50	
	John Adger, April 28, '62	1,000 00	
	Crawford, Hughes & Co., May 15, '60	5,000 00	
			114,205 57
			$436,727 86

The first item is the only one of value, to say $1,910.29.
Tax, costs, & fees to be deducted.

58 And on the 3rd day of August, A. D. 1872, came into court the said L. D. Childs, by Pope & Haskell, his solicitors, and filed his answer to the said bill of complaint; which answer is in words and of the tenor following:

Answer.

UNITED STATES OF AMERICA.
South Carolina District, Fourth Circuit:

The answer of L. D. Childs, one of the defendants to the bill of complaint of Joshua Green and Thomas Green, citizens of the State of Mississippi, complainant against this defendant and others.

This defendant, reserving to himself all benefit of exception to the said bill of complaint, for answer to the said bill, answering, says that

he admits that the Exchange Bank of Columbia was incorporated under the laws of South Carolina, in pursuance of an act of assembly passed on the 16th day of December, anno Domini 1852, having such capital and such chartered rights, regulations, and restrictions as are set forth in the said bill; that he admits the said bank did issue its notes as bank-notes, payable to bearer, but this defendant cannot state and does not know whether the said bank did issue the notes referred to in the said bill and enumerated in Schedule A *is* exhibited with the bill, nor
59 has he any knowledge whether said bills were in possession of
complainants at the time of the filing of their bill of complaint in this court; and he asks strict proof thereof. This defendant does not know that the said bank had failed on the 1st day of December, 1862, as set forth, with an indebtedness greatly exceeding its assets. And further answering, this defendant says that on the day aforesaid he was not a stockholder in the said bank, but he did acquire 200 shares of the capital stock of said bank some time in the year 1863, which said shares he obtained from Rufus M. Johnston. This defendant did not hold on the 1st day of December, A. D. 1862, or at any time within twelve months previous thereto, as trustee or guardian, or in any manner whatsoever, any share or shares of the capital stock of the said bank. And as to so much of the said bill as seeks to hold this defendant liable for the bills of the said bank, he, by protestation, not confessing any of the matters in the said bill to be true, & for a plea in that behalf, says: 1st. That the cause of action did not accrue within four years before the filing of the said bill in this suit. 2nd. For a further plea in that behalf he says that complainants did not exhibit their bill within six
60 months after the time that any supposed liability under the penalty
imposed by the said act was supposed to have accrued by the 4th section of the act of assembly referred to in said bill. 3rd. For a further plea defendant says that the operation of the second and fifth sections of the act of the 16th December, A. D. 1852, by which it is supposed that defendant has been rendered liable to certain penalties now sought to be enforced against this defendant, was suspended by an act of assembly passed on the 21st day of December, 1857, and continued to be suspended by other subsequent acts until the said Exchange Bank became insolvent, whereby the supposed liability of defendant was in law removed and annulled. 4th. And for a further plea defendant says that the assets of the said Exchange Bank has not yet been exhausted, nor has their value been ascertained. 5th. And for a further plea defendant says that on the 13th day of March, 1869, an act of assembly was passed providing in terms that unless the said Exchange Bank should, by the 1st of December following, comply in all respects to the provisions of the act incorporating the said bank, it should forfeit all of its rights and privileges; that by said act all acts and parts of acts inconsistent therewith were repealed; that
61 the said Exchange Bank did fail to comply with the provisions
of the act incorporating the said bank by the time limited and ever since; that the said act of assembly in no manner or words provided for a continuation of the liability of the stockholders of the said bank after the said forfeiture of its corporate rights and privileges.

6th. And for a further plea defendant says that he is informed and believe' that complainants obtained the notes or bills of the said bank, now held by them, long after they had ceased to be redeemable for gold or silver, or to be received or circulated as money, for a price far below their value, probably at ten cents on the dollar; that complainants are in no event entitled to recover more than they actually paid for said bills so held by them, with interest; and complainants, in making proof of said bills, should be required to discover whom, from whom, and at what price the said bills were obtained by them, provided said bills shall prove to be genuine and the complainants the lawful possessors thereof. And further answering, this defendant says that, as he is informed and believes, previous to the 16th day of April, 1870, the receiver of the said Exchange Bank of Columbia had in his custody a large amount 62 of the bills of the said bank belonging to sundry persons, and had deposited the same with Messrs. Scott, Williams & Co., of Columbia, for safe-keeping, and on the night of the said day the vault of the said Scott, Williams & Co. was broken open and said bills stolen. Wherefore these defendants submit that the complainants should be required to prove that their bills are not any of the said stolen bills.

And the defendant denies all unlawful combination, &c., and prays to be hence dismissed with his reasonable costs and charges in this behalf most wrongfully sustained.

POPE & HASKELL,
Solicitors for the Defendant L. D. Childs.

UNITED STATES OF AMERICA,
State of South Carolina, County of Richland:

Personally appeared L. D. Childs, the defendant above named, who, being duly sworn, says that the matters and things stated in the foregoing answer are true so far as they are within his own knowledge, and so far as they are stated on information and belief he believes them to be true.

L. D. CHILDS.

Sworn to before me this 27th July, 1872.

ALBERT M. BOOZER,
United States Commissioner District of South Carolina.

63 And on the 9th day of August, A. D. 1872, came into court the said Charles Alston & Wm. Alston Pringle, executors of Arthur P. Hayne, deceased, by W. Alston Pringle, their solicitor, and filed their answer to the said bill of complaint; which answer is in words and of the tenor following:

Answer.

THE UNITED STATES OF AMERICA,
South Carolina District:

Fourth circuit. In equity.

The answer of Charles Alston and William Alston Pringle, surviving executors of the last will and testament of Arthur P. Hayne, deceased, to the bill of complaint of Joshua Green and Thomas Green, citizens of the State of Mississippi, complainants, against these defendants and others.

These defendants, now and at all times hereafter saving and reserving to themselves all manner of benefit and advantage of exception to the many errors and insufficiencies in said bill contained, for answer thereto, or unto so much and such parts thereof as these defendants are advised is material or necessary for them to make answer unto, answering, say:

I. That they admit that the said Arthur P. Hayne did, by his last

will and testament, duly executed in writing, and bearing date the
64 first day of January, A. D. 1863, and by a codicil thereto annexed, and bearing date the 20th day of March, A. D. 1866, nominate and appoint these defendants, together with Elizabeth L. Hayne, William Alston Hayne, Alexander R. Taylor, and George L. Trenholm, executrix and executors of his said last will and testament; that the said William Alston Hayne, Alexander R. Taylor, and George L. Trenholm renounced the said executorship; that these defendants, together with Elizabeth L. Hayne, alone qualified on the said will, and assumed the burthen of the administration of the said estate; and that the said Elizabeth L. Hayne within a very short period after the death of the said Arthur P. Hayne, namely, early in the month of March, A. D. 1867, also departed this life, leaving the entire administration of the said estate to these defendants.

II. That the said Arthur P. Hayne departed this life on or about the day of January, A. D. 1867, and that soon thereafter these defendants took possession of his assets and papers, and proceeded to the administration of his estate; that in accordance with the requirements of the law they made an inventory of the estate, a copy of which is herewith filed, marked as Exhibit A, which said inventory was duly
65 filed in the probate court for Charleston County; that neither at the time of the taking and filing the said inventory nor at any time since had or have these defendants any reason to suspect or believe that the said Arthur P. Hayne, at the time of his death or at any time prior thereto, was or had been the owner of any share or shares in the said Exchange Bank of Columbia.

III. That it was not until the service of a subpœna ad respondendum on these defendants, on the 28th day of June of the present year, to answer the complaints in said bill of complaint, that these defendants had any knowledge or information that the said Arthur P. Hayne, their testator, was ever thought or suspected by any person to have been a shareholder in the said Exchange Bank of Columbia, and that the service of the said subpœna was the first intimation which these defendants ever had that such a suit was in contemplation, either against these defendants or any other person or persons whomsoever.

IV. That upon the service of the said subpœna upon these defendants, they made careful and dilligent search and examination among the papers of their testator, the said Arthur P. Hayne, for any evidence which could shew that at the time of his death or at any time
66 prior thereto he had ever owned or possessed any share or shares in the said Exchange Bank, or had in any way been connected with the same; but these defendants have failed to find the slightest trace among the said papers that the said Arthur P. Hayne had, either at the time of his death or at any time prior thereto, been the owner or possessor of any share or shares in the said Exchange Bank, or had ever in any way been connected with the same.

V. These defendants further say that they have enquired of officers of the said Exchange Bank, and of other persons, friends of the said Arthur P. Hayne, whose knowledge of his affairs entitled them to know, and these defendants say that they have been informed that the books of the said bank have been lost or destroyed, and they have failed, after much enquiries, to discover that the said Arthur P. Hayne, at the time of his death or any time prior thereto, was a shareholder in the said Exchange Bank of Columbia. And these defendants say that they have been for a great number of years intimate with the said Arthur P. Hayne, one of these defendants being his brother-in-law and the other

his nephew; that the said Arthur P. Hayne was a citizen and resident
of the city of Charleston, and that these defendants have
67 never heard from the said Arthur P. Hayne, during all their intercourse with him, nor from any one else, that he was ever a shareholder in said bank.

VI. And these defendants deny that the said Arthur P. Hayne, either at the time of his death or on the first day of December, A. D. 1862, or at any time within twelve months prior thereto, or between the first day of December, A. D. 1862, and the 22nd day of December, A. D. 1869, or at any other time whatever, owned or possessed a share or shares in the Exchange Bank of Columbia.

VII. These defendants admit that the Exchange Bank of Columbia was a corporation created by and under the laws of the State of South Carolina, organized pursuant to an act of the general assembly of the said State, entitled "An act to recharter the Planters and Mechanics' Bank of South Carolina, the Union Bank of South Carolina, the Commercial Bank of Columbia, South Carolina, and to incorporate the Exchange Bank of Columbia, the Farmers' & Exchange Bank, and the People's Bank of Charleston, the Bank of Newberry, the Bank of Chester, the Bank of Sumterville, the Planters' Bank of Fairfield, and the Western Bank of South Carolina at Anderson," passed on the 16th day of December,
A. D., 1852; that the said bank had such capital, was endowed
68 with such rights and privileges, and was subject to such duties,
liabilities, obligations, regulations, and restrictions as are mentioned in the said bill of complaint; but these defendants deny that, by any provision of the said act, was any personal or individual liability, imposed on the stockholders of the said Exchange Bank of Columbia, in case of the failure of the said bank.

VIII. And as to so much of the said bill wherein it is claimed that these defendants, as executors aforesaid, are liable to the complainants for the bills of the said Exchange Bank, these defendants, as executors aforesaid, by protestation, not confessing any of the matters in the said bill of complaint contained to be true, do plead thereto, and for cause of plea do say that the cause of action did not accrue within four years before the commencement of this action, if it ever did accrue at all.

IX. And for a further plea in this behalf these defendants say that the complainants did not exhibit their bill within six months after the time that these defendants, as executors aforesaid, became liable to the
penalty imposed by the fourth section of the act of the general
69 assembly referred to in said bill, if they ever were liable at all.

X. And for a further plea in this behalf these defendants say that by the second section of the act entitled "An act to recharter the Planters and Mechanics' Bank, the Commercial," &c., &c., passed on the 16th day of December, A. D. 1852, it is provided that the said Exchange Bank shall be subject to all the provisions of an act passed on the 18th day of December, A. D. 1840, entitled "An act to provide against the suspension of specie payments by the banks of this State;" and by the fifth section of the first above-mentioned act it is also provided that it shall not be lawful for the said Exchange Bank, except on settlement with other banks, to pay or deliver in payment or satisfaction of any demand upon it, by way of loan or discount, any bill, note, check, or other paper of any other bank; that the operation of the said second and fifth sections was suspended by an act of the general assembly passed on the 21st day of December, A. D. 1857, and continued to be suspended by other subsequent acts, until the said Exchange Bank became insolvent and failed, whereby whatever liability may have been, if any was im-

posed upon these defendants, as executors aforesaid, by the fourth
70 section of the aforesaid act passed on the 16th day of December,
A. D. 1852, became and was in law removed and annulled.

XI. And for a further plea in this behalf these defendants say that the assets of the said Exchange Bank have not as yet been exhausted, nor has their value been ascertained.

XII. And for a further plea in this behalf these defendants say that it has not been ascertained what is the amount of the liabilities of the said bank.

XIII. And for a further plea in this behalf these defendants say that on the 13th day of , A.D.1869, an act was passed by the general assembly of the State of South Carolina by which it was provided that unless the said Exchange Bank should on or before the first day of December, A. D. 1869, commence paying their bills of credit, agree to redeem their bills, and in other respects comply with the provisions of the act incorporating the said bank, it, the said bank, should forfeit all corporate rights and privileges; that by said act all acts and parts of acts inconsistent thereto were repealed; that the said Exchange Bank did fail and has failed to pay its bills of credit, redeem its bills, and in every re-
spect to comply with the provisions of the act incorporating said
71 bank, before or on the said first day of December, A. D. 1869, or
ever since; that the said act of the general assembly of the said
State in no manner or words provided for a continuation of the liability of the stockholders of the said bank after the said forfeiture of its corporate rights and privileges.

And for a further plea in this behalf these defendants say that, as these defendants have been informed and believe, the said complainants obtained the notes or bills of the said bank now held by them long after the said notes or bills had ceased to be redeemable for gold or silver, or to be current as money, for a price far below their par value, and probably not exceeding ten cents on the dollar; that the complainants are in no event entitled to receive more than they actually paid for the bank-bills so held by them, with proper interest, and that the complainants, upon producing and making proof of the same, should be required to discover when, from whom, and at what price the said bank-bills were obtained by them, provided such bills shall be proved to be
genuine and the complainants the lawful possessors thereof.

72 XIV. And for a further plea in this behalf these defendants
say that, as these defendants are informed and believe, the said
Exchange Bank, after it had failed and become insolvent, issued a large amount of its notes or bills, for which issue no individual or personal liability attaches to the shareholders in the said bank; and that the complainants should be required to prove that the bills which they hold are not any of the bills or notes so issued by the said bank after it had failed and become insolvent.

XV. And for a further plea in this behalf these defendants say that soon after the death of their testator, the said Arthur T. Hayne, to wit, during the months of June and July, A. D. 1867, they, as the surviving executors of the said Arthur P. Hayne, gave due and proper public notice by the proper advertisements, as the law directs, in the public newspapers, to all persons having demands against the estate of the said Arthur P. Hayne to give an account thereof and present the same to W. Alston Pringle, one of these defendants; that the said complainants totally neglected and failed to present their demands or to give any notice thereof, in accordance with the terms of the said advertisements, and that in default thereof all the goods and chattels

73 which were of the said Arthur P. Hayne, deceased, at the time of his death, and which have ever come into the hands of these defendants as executors aforesaid to be administered, had been fully administered and distributed before the commencement of this action, and before these defendants ever had notice of the demands of the complainants or of their action, except as to the sum of one hundred and ninety-three dollars and thirty-four cents; and these defendants had not at the commencement of this action, nor at any time since, any goods or chattels which were of the said Arthur P. Hayne at the time of his decease to be administered, except the said sum of one hundred and ninety-three dollars and thirty-four cents; and these defendants herewith file, marked as Exhibits A and B, certified copies from the probate court for Charleston County of the inventory and appraisement of the estate of said Arthur P. Hayne and of all their accounts and transactions in connection with the same.

XVI. Further answering the residue of said bill, these defendants say that, as they are informed and believe, previous to the 15th day of April, A. D. 1870, the receiver of the said Exchange Bank of Columbia 74 had in his custody a large amount of the bills of the said bank, belonging to sundry persons, and had deposited the same with Messrs. Scott, Williams & Co., of Columbia, for safe-keeping, and on the night of the same day the vault of the said Scott, Williams & Co. was broken open and said bills stolen. Wherefore these defendants submit that the complainants should be required to prove that their bills are not any of the said bills.

And these defendants deny, &c., &c., without this, that there is any other matter, cause, or thing in said complainant's bill of complaint contained material or necessary for these defendants to make answer unto, and not herein and hereby well and sufficiently answered, confessed, traversed, and avoided, or denied, is true to the knowledge or belief of these defendants; all which matters and things these defendants are ready and willing to aver, maintain, and prove, as this honorable court may direct, and humbly pray to be hence dismissed with their reasonable costs and charges in this behalf most wrongfully sustained.

W. ALSTON PRINGLE,
Defts. Atty.

UNITED STATES OF AMERICA:

75 Personally appeared before me Charles Alston and William Alston Pringle, the within-named executors of Arthur P. Hayne, who, being duly sworn, say, each for himself, that the matters and things stated in the foregoing answer are true so far as the same are stated of his own knowledge, and that the matters and things therein stated on information & belief he believes to be true.

CHARLES ALSTON, JR.
W. ALSTON PRINGLE.

Sworn to before me this ninth day of August, A. D. 1872, the interlineation on the third page being first made.

[SEAL.] JNO. F. PORTEUS,
U. S. Comr.

Exhibit A to answer of Charles Alston and W. Alston Pringle, executors.

A true and perfect inventory of all the goods, chattels, and personal estate of Col. Arthur P. Hayne, late of Charleston, in the State of South Carolina, deceased, made by us whose names are hereunto subscribed, this day of April, A. D. 1867.

112 shares in Charlotte & So. Ca. R. R	4,000 00

100 " " Atlanta, Tennessee & Ohio Railroad	750 00

Amount due deceased from the estates of his father & brother
William, in which Miss Hayne has a life interest, the
76 funds being in her hands. Bond of Charles & Adolphus Follin, the original of the above bond not to be
found among the papers. Note of J. T. Jackson, of Alabama, in hands of C. T. Pollard, of Montgomery.

Balance U. S. currency in First National Bank	640 00

FURNITURE.

3 bedsteads, with beds, pillows, &c	85 00
2 dressing-tables	10 00
2 bureaus	10 00
1 press	12 00
4 wash-stands	3 00
1 lounge	5 00
2 arm-chairs	6 00
3 carpets for bed-rooms	30 00
3 pitchers & basins, tubs, &c	5 00
1 parlor-sofa	10 00
2 arm-chairs	20 00
2 " " (horse-hair)	20 00
6 small chairs	12 00
4 cane "	6 00
2 work-tables	7 00
1 writing-table	6 00
1 dining-table	12 00
1 card-table	3 00
1 breakfast-table	10 00
2 tables	5 00
2 Turkey carpets, rugs, cloth, &c	70 00
77 2 clocks, 2 vases, 4 bronze candlesticks	20 00
2 screens	2 00
2 towel-racks	2 00
1 bust, pictures, vases, &c	50 00
1 India table & tea-caddy	1 00
Cushions, foot-stools, &c	5 00
2 looking-glasses	7 00
1 bath-tub & chair	2 00
17 chairs	20 00
2 ottomans	3 00
2 feet-supporters	2 00
Odds & ends	5 00
1 desk & hat-case, 6 trunks, 2 carpet-bags	30 00
1 hat-stand	5 00
1 sideboard	10 00
1 set Dresden china, common china, glass tumblers, tinware, stove, kitchen utensils, fenders, hand-irons, shovels, tongs, &c., lamps, 3 waiters, knives, &c., boxes containing bed-linen	150 00
Boxes containing table-linen	
" " quilt-comforts	
" " blankets	
" " window-shades	
" " curtains	

Books pamphlets, &c	50 00
Trunks with wearing-clothes	10 00

78 SILVER.

	Oz.	
	72	24 dining-forks.
	40½	22 breakfast "
	19½	19 teaspoons.
	72½	24 table "
	37	20 desert "
	5½	2 gravy soup-ladle'.
	5½	2 ladles.
	5	11 plated egg-spoons.
	4½	6 large salt-spoons.
		2 small plated salt-spoons.
	38	18 fruit-knives.
	2	1 butter-knives.
	2	1 sugar-tongs.
	32	1 tea-pot.
	34	1 coffee-pot.
	16	1 sugar-dish.
	18½	1 slop-bowl.
	76	1 kettle with stand.
	83¼	3 silver waiters.
	8¼	2 salt-cellers.
	8	1 soup-ladle.
	20	1 silver castor.
	29½	2 silver dishes.
	10¾	1 toast-holder.
	11	3 silver tumblers.
	6½	2 large spoons.
	18½	1 cream-jug.
	13	1 dish-stand.
79	1	1 small sugar-lifter.
	7¼	1 fish-knife.

697½ oz. silver, @ 1.60	1,116 00
1 watch & chain	40 00
1 diamond breast-pin	350 00

MOTTE. A. PRINGLE.
THOMAS FROST.
LOUIS D. DE SAUSSURE.

Filed December 16th, 1868.

Inventory of a portion of the estate of the late Col. Arthur P. Hayne, late of Charleston, deceased.

112 shares Charlotte & So. Ca. R. R.

W. ALSTON PRINGLE, *Exor.*

Filed August 22nd, 1868.

THE STATE OF SOUTH CAROLINA,
Charles. County:

In probate court.

I do hereby certify the foregoing pages to be and contain a true and correct copy of the inventories of the estate of Col. A. P. Hayne, deceased, filed and rendered in this court on the day and year above set forth.

Given under my hand & seal of office this twenty-ninth day of July, A. D. 1872.

GEORGE BUIST, [SEAL.]
Probate Judge.

80 COLUMBIA, S. C., *Aug't 25th*, 1868.

W. ALSTON PRINGLE, Esq.:

DEAR SIR:

For sales 62 shares Charlotte R. R. Co., @ $38	$2,356
Less comms., ½	11 78
We enclose cash	$2,344 22

We shall receive and send the money for other 50 shares this week.

Yours, respectfully,

SCOTT, WILLIAMS & CO.

Filed June 27, 1872.

COLUMBIA, S. C., *Aug. 28th*, 1868.

W. ALSTON PRINGLE, Esq.

DEAR SIR:

For sales 50 shares Charlotte Railroad Co., @ $38	$1,900 00
Less comms., ½	9 50
We enclose	1,890 50

Yours, respectfully,

SCOTT, WILLIAMS & CO.

Filed June 27th, 1872.

THE STATE OF SOUTH CAROLINA,
Charleston County:

In probate court.

I do hereby certify the foregoing pages to be and contain a true and correct copy of the account-sales of the estate of Col. A. P. Hayne, deceased, filed and rendered in this court on the day and
81 year above set forth.

Given under my hand and seal of office this twenty-ninth day of July, A. D. 1872.

GEORGE BUIST, [SEAL.]
Probate Judge.

And on the 28th day of August, A. D. 1872, came into court the said John W. Parker, by Bachman & Waties, his solicitors, and filed his answer to the said bill of complaint, which answer is in words and of the tenor following:

Answer.

UNITED STATES OF AMERICA,
South Carolina:

In equity.

The separate answer of John W. Parker to the bill of complaint of J. & T. Green, citizens of the State of Mississippi, against Cyrus H. Baldwin, receiver of the Exchange Bank of Columbia, J. T. Carroll, L. D. Childs, and others.

This defendant, saving and reserving to himself all benefit of exception to the errors and uncertainties in said bill contained, for answer thereto, or so much thereof as he is advised it is necessay for him to an-
swer, answering says, that he was not a stockholder in the Ex-
82 change Bank of Columbia at the time of the failure of said bank,
nor was he interested in any way in said bank or the stock thereof
at any time within twelve months previous to the failure of said bank.

This defendant, having fully answered, prays to be hence dismissed with his reasonable costs and charges.

BACHMAN & WATIES,
Attorneys for J. W. Parker.

UNITED STATES OF AMERICA,
State of South Carolina:

Pesonally appeared John W. Parker and makes oath that the matters and things in foregoing answer contained are true so far as derived from his own knowledge, and so far as derived from the information of others he believes them to be so.

J. W. PARKER.

Sworn to before me this 24 August, 1872.

THOMAS J. LA MOTTE,
U. S. Com'iss'r S. C. Dist.

And on the 1st day of October, A. D. 1872, came into court the said Pettus W. Chicks, by Fair, Pope & Pope, his solicitors, and filed his an-
swer to the said bill of complaint, which answer is in words and
83 of the tenor following:

Answer.

United States district court for the district of South Carolina. In equity.

JOSHUA GREEN AND THOMAS GREEN, citizens of the State of Mississippi, trading under the firm-name J. & T. Green, plaintiffs, *against* CYRUS H. BALDWIN, AS RECEIVER OF THE Exchange Bank of Columbia; J. P. Carroll, L. D. Childs, and others, defendant'.	Bill of complaint.

The seperate answer of Pettus W. Chick to the bill of complaint in the above-stated action.

This defendant, now and at all times hereafter saving and reserving to himself all manner of benefit and advantage of exception to the many errors and insufficiencies in said bill contained, for answer thereto, or to so much thereof as he is advised it is material or necessary to make answer, answering, says:

I. That he admits that the Exchange Bank of Columbia was a corporation created by and under the laws of the State of South Caro-
84 lina, pursuant to an act of the general assembly of said State, entitled "An act to recharter the Planters' and Mechanics' Bank of South Carolina," &c.

II. That he admits that the said Exchange Bank of Columbia did issue certain notes called bank-notes, payable to bearer; but this defendant does not know, nor has he been informed, save by the plaintiffs' said bill, and he cannot set forth as to his belief or otherwise, whether the said Exchange Bank of Columbia did or did not issue the bank-notes enumerated in the Schedule A annexed to the bill, neither has the defendant any knowledge whether the plaintiffs were in possession of the bills of the said bank, as alleged in their bill, at the time of the commencement of their suit; nor whether the plaintiffs are the rightful owners of said bills, and he demands strict proof to be made of the same.

III. That this defendant was the owner in his own right of at least two hundred shares of the stock of the said Exchange Bank of Columbia on or about the first day of May, A. D. 1862, all and every share of which stock he then sold, and that since said date he has not been the absolute owner of or interested in any stock in said bank, nor has
85 he acquired any of said stock in said bank as trustee, pledgee, or otherwise.

IV. That in May, A. D. 1862, when he sold to a bona-fide purchaser, Antwerp, of Columbia, who was a solvent and a reputed wealthy man, and for twelve months subsequent thereto, the said Exchange Bank of Columbia was solvent and had not failed, and this defendant believes that said bank was able to meet all of its liabilities until some time in the year A. D. 1865.

V. That as to so much of the said plaintiffs' bill wherein it is claimed that this defendant is liable to the plaintiffs for the bills of said Exchange Bank of Columbia, this defendant, by protestation, not confessing any of the matters in said bill contained to be true, doth plead thereto, and for cause of plea doth say that the plaintiffs have not recovered judgment upon the said bills against the said Exchange Bank of Columbia.

VI. That as a further cause of plea in this behalf this defendant doth say that the cause of action stated in the plaintiffs' bill did not accrue within four years before the commencement of this action.

VII. That, as a further cause of plea in this behalf, the defendant doth say that the plaintiffs did not commence their action within six months after the time this defendant became liable to the penalty imposed by the fourth section of the act of the general assembly
86 referred to in the said bill of complaint.

VIII. That, as a further cause of plea in this behalf, the defendant doth say, that by the second section of the act entitled "An act to recharter the Planters' and Mechanics' Bank, the Commercial Bank, &c., &c., passed on the 16th day of December, A. D. 1852," it is provided that the said Exchange Bank of Columbia shall be subject to all provisions of an act passed on the 18th day of December, A. D. 1840, entitled "An act to provide against the suspension of specie payment by the banks of this State," and by the fifth section of the first of the

above-mentioned acts it is also provided that it shall not be lawful for the said Exchange Bank of Columbia, except in settlement with other banks, to pay or deliver in payment or satisfaction of any demand upon it, or by way of loan or discount, any bills, note, check, or other paper of any other bank; that the operation of the said second and fifth sections was suspended by an act of the general assembly passed on the 21st day of December, A. D. 1857, and continued to be suspended by other subsequent acts until the said Exchange Bank of Columbia
became insolvent and failed, whereby whatever liability may
87 have been imposed upon this defendant by the fourth section of
the aforesaid act passed on the 16th day of December, A. D. 1852,
became and was in law removed and annulled.

IX. That as a further cause of plea in this behalf, the defendant doth say that the assets of the said Exchange Bank of Columbia have not yet been exhausted, nor has their value been ascertained.

X. That as a further cause of plea in this behalf the defendant doth say, that it has not been ascertained what is the amount of the liabilities of the said Exchange Bank of Columbia.

XI. That as a further cause of plea in this behalf, the defendant doth say, that on the 13th day of March, A. D. 1869, an act was passed by the general assembly of the State of South Carolina by which it was provided that unless the Exchange Bank of Columbia should, on or before the 1st day of December, 1869, commence paying its bills of credit, agree to redeem its bills, and in other respects comply with the provisions of the act incorporating the said bank, it, the said bank, should forfeit all corporate rights and privileges; that by the said act, all acts and parts of acts inconsistent therewith were repealed.

That the said Exchange Bank of Columbia did fail and has failed
to pay its bills of credit, redeem its bills, and in any respect to
88 comply with the provisions of the act incorporating the said bank
on or before the said 1st December, A. D. 1869, and ever since;
that the said act of the general assembly in no manner or words provided for a continuation of the liability of stockholders of the said bank after the said forfeiture of its corporate rights and privileges.

XII. And that as a further cause of plea in this behalf, this defendant doth say that, as this defendant hath been informed and believes, the said plaintiffs obtained the notes or bills of the said Exchange Bank of Columbia now held by them long after the said notes or bills had ceased to be redeemable for gold or silver, or to be current as money, for a price far below their par value, and probably not exceeding ten cents in the dollar; that the plaintiffs are in no event entitled to recover more than they actually paid for the bank-bills held by them, with proper interest; and that the plaintiffs upon producing and making proof of the same should be required to discover when, from whom, and at what price the said bank-bills were obtained by them, provided said bills shall be proved to be genuine, and the plaintiffs the lawful possessors thereof.

XIII. That previous to the 16th day of April, A. D. 1870, the
89 said receiver of the said bank had redeemed a large amount of
the bills of the said bank, and had deposited the same for safe-
keeping with Messrs. Scott, Williams and Company, of Columbia, and that on the night of the said day, the vault of the said Messrs. Scott, Williams and Company was broken open and said bills stolen; wherefore your defendant submits that the plaintiff be required to prove that the bills held by them are not any of said stolen bills.

XIV. That this defendant, by way of further plea in this behalf, doth say, that the plaintiffs have not alleged that they held the said bank-bills at the time this defendant sold his stock in said bank, to wit, on or about the first of May, 1862, nor at any time within twelve months subsequent thereto.

XV. That this defendant, by way of further plea in this behalf, doth say that the plaintiffs have not alleged that they held the said bank-bills at the time the said plaintiffs in their said bill pretend that the said bank failed.

XVI. That this defendant, by way of further plea in this behalf, doth say that the plaintiffs do not allege a want of knowledge of the failure or insolvency of the said bank when they became the holders of the said bank-bills.

90 XVII. That for specific answer by this defendant to the interrogatories by the said plaintiffs in their said bill of complaint propounded this defendant would say:

Answer to first interrogatory. I cannot answer, for lack of information.

Answer to third interrogatory. The Exchange Bank of Columbia had not failed on the first day of December, 1862, and was not indebted beyond its means to pay.

Answer to fourth interrogatory. I owned at least two hundred shares of stock in said bank on the first of May, 1862, but never owned any of said stock subsequent to that time.

Answer to fifth interrogatory. I sold and transferred all my stock in said bank on the first of May, 1862, to Antwerp, of Columbia, South Carolina.

Answer to sixth interrogatory. No.

Answer to seventh interrogatory. No.

Having fully answered, this defendant prays to be dismissed with his reasonable costs and charges in this behalf most wrongfully sustained.

91 And he will ever pray.

FAIR, POPE & POPE,
Defendant's Attorneys.

You swear that the matters and things in this your answer contained, where stated of your own knowledge, are true, and where stated upon the information of others, you believe them to be true: so help you God.

P. W. CHICK.

Sworn to before me on this the 28th September, A. D. 1872.

[SEAL.] T. S. DUNCAN,
Notary Public.

And on the 12th day of October, A. D. 1872, came into court the said W. B. Stanley, William Wallace, exor., A. W. Kennedy, William Martin, exor., William Wallace, William A. Lovick, and J. D. A. Kibler, admrs., Charles Logan, J. P. Southern, A. B. Springs, William M. McGuinness, J. H. Kinard, E. L. Herndon, admx., Lewis Levy, by James H. Rion, their solicitor, and filed their answer to the said bill of complaint; which answer is in words and of the tenor following:

Answer.

THE UNITED STATES OF AMERICA,
South Carolina District:

Fourth circuit. In equity. 1872.

92 The joint and several answer of W. B. Stanley; William Wallace, executor of the last will and testament of Andrew Wallace, deceased; A. W. Kennedy; William Martin, executor of the last will and testament of Edward J. Arthur, deceased; William Wallace, William A. Lovick, and J. D. A. Kibler, administrators of the estate of Jesse Drafts, deceased; Charles Logan, J. P. Southern, A. B. Springs, William M. McGuinness, J. H. Kinard; E. L. Herndon, administratrix of the estate of Z. P. Herndon, deceased; and Lewis Levy, fourteen of the defendants to the bill of complaint of Joshua Green and Thomas Green, citizens of the State of Mississippi, complainants, against these defendants and others.

These defendants, now and at all times hereafter saving and reserving to themselves and each of them all right and benefit of exception which can or may be had or taken to the many errors, uncertainties, and other imperfections in the said complainants' said bill of complaint contained, for answer thereunto, or unto so much and such parts thereof as these defendants are advised is or are material or necessary for them or any of them to make answer unto, they, these defendants, answering, say:

I. That they admit that the Exchange Bank of Columbia was 93 a corporation created by and under the laws of the State of South Carolina, organized pursuant to an act of the general assembly of said State entitled "An act to recharter the Planters and Mechanics' Bank of South Carolina, the Union Bank of South Carolina, the Commercial Bank of Columbia, South Carolina, and to incorporate the Exchange Bank of Columbia, the Farmers' and Exchange Bank, and the People's Bank of Charleston, the Bank of Newberry, the Bank of Chester, the Bank of Sumterville, the Planters' Bank of Fairfield, and the Western Bank of South Carolina, at Anderson," passed December the 16th, 1852. That by said act the said Exchange Bank of Columbia had such capital, was endowed with such rights and privileges, and was subject to such duties, liabilities, obligations, regulations, and restrictions as in said bill are set forth.

II. That these defendants admit that the said Exchange Bank of Columbia did issue certain notes, called bank-bills, payable to the bearer thereof; but these defendants know not, neither have they been informed save by complainants' said bill of complaint, whether the complainants are the lawful owners and holders of any of said bills, as in said bill they are alleged to be.

94 III. And as to so much of said bill wherein it is claimed that these defendants are liable to the complainants for the bills of the said bank, these defendants, by protestation, not confessing any of the matters in said bill contained to be true, do plead thereto, and for cause of plea do say:

1st. That the cause of action stated in the said bill did not accrue within four years before the exhibiting thereof.

2d. That the complainants did not commence their action within six months after the time these defendants became liable to the penalty imposed by the fourth section of the act of the general assembly referred to in said bill, if they became liable at all.

3d. That by the second section of the act entitled "An act to recharter the Planters and Mechanics' Bank, the Commercial Bank of Columbia," &c. &c., passed on the 16th day of December, A. D. 1852, it is provided that the said Exchange Bank " shall be subject to all the provisions of an act passed on the 18th day of December, A. D. 1840, entitled "An act to provide against the suspension of specie payment by the banks of this State;" and by the fifth section of the first above-mentioned act it is also provided " that it shall not be lawful for the said [Exchange] 95 bank, except in settlement with other banks, to pay or deliver in payment or satisfaction of any demand upon it, or by way of loan or discount, any bill, note, check, or other paper of any other bank." That the operation of the said second and fifth sections was suspended by an act of the general assembly passed on the 21st day of December, A. D. 1857, and continued to be suspended by other subsequent acts until the said Exchange Bank became insolvent and failed, whereby whatever liability may have been imposed upon these defendants, if any liability was so imposed, by the fourth section of the aforesaid act passed on the 16th day of December, A. D. 1852, became and was in law removed and annulled.

4th. That the assets of the said Exchange Bank have not yet been exhausted, nor has their value been ascertained.

5th. That it has not been ascertained what is the amount of the liabilities of the said bank.

6th. That on the 13th day of March, A. D. 1869, an act was passed by the general assembly of the State of South Carolina by which it was provided that unless the said Exchange Bank should on or before the first day of December, 1869, commence paying their bills of credit, agree to redeem their bills, and in other respects to comply with the 96 provisions of the act incorporating the said bank, it, the said bank, should forfeit all corporate rights and privileges. That by said act all acts and parts of acts inconsistent therewith were repealed. That the said Exchange Bank did fail and has failed to pay its bills of credit, redeem its bills, and in any respect to comply with the provisions of the act incorporating the bank, before or on the said first day of December, 1869, or ever since. That the said act of the general assembly in no manner or words provided for a continuation of the liability of stockholders of the said bank after the said forfeiture of its corporate rights and privileges.

7th. That, as these defendants have been informed and believe, the said complainants obtained the notes and bills of the said bank, now held by them as they allege, long after the said notes or bills had ceased to be redeemable for gold and silver, or to be current as money, for a price far below their par value, and probably not exceeding ten cents in the dollar; that the complainants are in no event entitled to recover more than they actually paid for the bank bills so held by them, with proper interest; and that the complainants, upon producing and making proof of the same, should be required to discover when, from 97 whom, and at what price the said bank-bills were obtained by them, provided said bills shall be proved to be genuine, lawfully issued, and the complainants the lawful possessors thereof.

IV. Further answering the residue of said bill of complaint, these defendants say that previous to the 16th day of April, A. D. 1870, there had been redeemed a large amount of the bills of the said bank, so that, with the exception of such bills as were retained by the stockholders for their own protection, there were not outstanding and unredeemed of the said bills exceeding the sum of five thousand dollars; that the said bills so redeemed had been deposited for safe-keeping with Messrs. Scott, Williams & Co., of Columbia; that on the night of the said 16th day of April, A. D. 1870, the vault of the said Messrs. Scott, Williams & Co. was broken open and the said redeemed bills were stolen therefrom; that the bills claimed by the complainants exceed in amount the said sum of five thousand dollars, and these defendants therefore demand that strict proof be made by the complainants as to the fact that their said bills (if any they have) have not been redeemed.

V. That these defendants do not know, nor have they been informed save by complainants' said bill, whether the Exchange Bank of
98 Columbia did not refuse by its president and cashier to pay the bank-notes enumerated in the schedule A, annexed to the said bill of complaint.

VI. That in December, 1862, and for twelve months subsequent thereto, the said Exchange Bank was solvent, and had not failed; and these defendants believe that said bank was able to meet all its liabilities until some time in the year 1865.

VII. That as many of the defendants as are sued as administrators or executors deny that any act of the general assembly or section thereof impose' any liability upon them in their character as administrators or executors, or upon the estates of their intestates or of their testators, for any failure of the Exchange Bank.

VIII. That all these defendants adopt the foregoing as their answer, and as to those matters of interrogatory which they and each of them are severally required to make answer unto, and have not hereinbefore answered, they so answer in separate schedules hereunto annexed, severally signed and sworn to by each of said defendants, which are hereby made part of this answer, and to which reference is craved.

99 And these defendants deny, and so forth, without this, that there is any other matter, cause, or thing in the said complainants' said bill of complaint contained material or necessary for these defendants to make answer unto, and not herein and hereby well and sufficiently answered, confessed, traversed, and avoided or denied, is true to the knowledge or belief of these defendants; all which matters and things these defendants are ready and willing to aver, maintain, and prove, as this honorable court shall direct, and humbly pray to be hence dismissed with their reasonable costs and charges in this behalf most wrongfully sustained.

JAS. H. RION,
Defendants' Solicitor.

Schedule of W. B. Stanley to answer of W. B. Stanley and others.—Filed Oct. 25, 1872.

In the U. S. circuit court. In equity.

UNITED STATES OF AMERICA,
South Carolina District:

J. & T. GREEN, OF MISSISSIPPI,
vs.
CYRUS H. BALDWIN, RECEIVER OF THE EXchange Bank of Columbia, J. P. Carroll, et al. } Bill of complaint.

100 Schedule of William B. Stanley, to be filed with, make part of,

and complete the answer of William B. Stanley and others as to this defendant.

As to interrogatories 1 and 3, this defendant has already answered.
As to interrogatory 4, this defendant answers: Thirty-five shares.
As to interrogatory 5, this defendant answers: None.
As to interrogatory 6, this defendant answers: None.
As to interrogatory 7, this defendant answers: None.

STATE OF SOUTH CAROLINA,
County of Richland:

William B. Stanley, the defendant herein named, being duly sworn, says that the foregoing schedule and the answer which it completes and forms part of are true, to his own knowledge, except as to those matters therein stated on information and belief, and as to those matters he believes them to be true.

W. B. STANLEY.

Sworn to before me this 21 day of Oct., 1872.

THOMAS J. LA MOTTE,
U. S. Com's'r, S. C. Dist.

101 *Schedule of William Wallace, exor., to the answer of W. B. Stanley and others.—Filed* 28 *Oct.*, 1872.

In the U. S. circuit court. In equity.

UNITED STATES OF AMERICA,
South Carolina District:

J. & T. GREEN, OF MISSISSIPPI, *vs.* CYRUS H. BALDWIN, RECEIVER OF THE Exchange Bank of Columbia, J. P. Carroll, et als.	Bill of complaint.

Schedule of William Wallace, executor of the last will and testament of Andrew Wallace, deceased, to be filed with, make part of, and complete answer of William B. Stanley and others.

As to interrogatory 8th, this defendant, further answering, says that Andrew Wallace, deceased, his testator, on the 1st day of December, 1862, and within twelve months previous thereto, own' four hundred shares and no more or other shares; and that between the first day of December, 1862, and the 22nd day of December, 1869, the said deceased owned no shares additional to the foregoing.

102 STATE OF SOUTH CAROLINA,
County of Richland:

William Wallace, the defendant herein named, being duly sworn, says that the foregoing schedule and the answer which it completes and forms part of are true to his own knowledge, except as to those matters therein stated on information and belief, and as to those matters he believes them to be true.

WM. WALLACE.

Sworn to before me this 23rd day of Oct., 1872.

THOMAS J. LA MOTTE,
U. S. Com's'r, S. C. Dist.

Schedule of A. W. Kennedy to answer of W. B. Stanley and others.—Filed 25 *Oct.*, 1872.

In the U. S. circuit court. In equity.

UNITED STATES OF AMERICA,
South Carolina District:

J. & T. GREEN, OF MISSISSIPPI, *vs.* CYRUS H. BALDWIN, RECEIVER OF THE Exchange Bank of Columbia, J. P. Carroll, et als.	Bill of complaint.

103 Schedule of Arthur W. Kennedy, to be filed with, made part of and complete the answer of William B. Stanley and others as to this defendant.

As to interrogatories 1 and 3, this defendant has already answered.

As to interrogatory 4, this defendant answers that he owned one hundred shares.

As to interrogatory 5, this defendant answers that he transferred no shares between the dates mentioned.

As to interrogatory 6, this defendant answers: No shares.

As to interrogatory 7, this defendant answers: No shares.

STATE OF SOUTH CAROLINA,
County of Richland:

Arthur W. Kennedy, the defendant herein named, being duly sworn, says that the foregoing schedule and the answer which it completes and forms part of, are true to his own knowledge, except as to those matters therein stated on information and belief, and as to those matters he believes them to be true.

A. W. KENNEDY.

Sworn to & subscribed before me this 19th day of Oct., 1872.

ALBERT M. BOOZER,
United States Commissioner District of South Carolina.

104 *Schedule of William Martin, executor of E. J. Arthur, deceased, to the answer of W. B. Stanley and others.—Filed* 4 *Dec.*, 1872.

In U. S. circuit court. In equity.

UNITED STATES OF AMERICA,
South Carolina District:

J. & T. GREEN, OF MISSISSIPPI, *against* CYRUS H. BALDWIN, RECEIVER OF THE Exchange Bank, of Columbia, J. P. Carroll, et als.	Bill of complaint.

Schedule of William Martin, as executor of the last will and testament of Edward J. Arthur, deceased, to be filed with, make part of, and complete the answer of William B. Stanley and others.

As to interrogatory 8th, this defendant, further answering, says that, as he has been informed and believes, the said Edward J. Arthur, deceased, on the 1st day of December, 1862, and within twelve months previous thereto, owned one hundred shares and no more or other shares; and that between the 1st day of December, 1862, and the 22d day of December, 1869, the said deceased owned no shares additional to the foregoing. 105

STATE OF SOUTH CAROLINA,
County of Richland:

William Martin, the defendant herein named, being duly sworn, says that the foregoing schedule and the answer which it completes and forms part of are true to his own knowledge, except as to those matters therein stated on information and belief, and as to those matters, he believes them to be true.

WM. MARTIN.

Sworn to and subscribed before me this 30th day of November, 1872.
ALBERT M. BOOZER,
United States Commissioner District of South Carolina.

Schedule of William Wallace to the answer of W. B. Stanley and others.—Filed 28th October, 1872.

In the U. S. circuit court. In equity.

UNITED STATES OF AMERICA,
South Carolina District:

J. & T. GREEN, OF MISSISSIPPI,
vs.
CYRUS H. BALDWIN, RECEIVER OF THE EXchange Bank of Columbia, J. P. Carroll, et als.
} Bill of complaint.

106 Schedule of William Wallace, to be filed with, made part of, and complete the answer of William B. Stanley and others as to this defendant.

As to interrogatories 1 and 3, this defendant has already answered.

As to interrogatory 4, this defendant answers that he owned no shares.

As to interrogatory 5, this defendant answers that he transferred no shares between the dates mentioned.

As to interrogatory 6, this defendant answers: No shares.

As to interrogatory 7, this defendant answers: No shares.

STATE OF SOUTH CAROLINA,
County of Richland:

William Wallace, the defendant herein named, being duly sworn, says that the foregoing schedule and the answer which it completes and forms part of are true to his own knowledge, except as to those matters therein stated on information and belief, and as to those matters he believes them to be true.

WM. WALLACE.

Sworn to before me this 23d day of Oct., 1872.
THOMAS J. LA MOTTE,
U. S. Com's'r S. C. Dist.

107 *Schedule of W. A. Lovick and John D. A. Kibler, admrs. of Drafts.—Filed 1st April, 1873.*

In the U. S. circuit court. In equity.

UNITED STATES OF AMERICA,
South Carolina District:

J & T. GREEN, OF MISSISSIPPI,
vs.
CYRUS H. BALDWIN, RECEIVER OF THE Exchange Bank of Columbia, J. P. Carroll, et als. } Bill of complaint.

Schedule of Wade A. Lovick and J. D. A. Kibler, administrators of the estate of Jesse Drafts, deceased, to be filed with, make part of, and complete the answer of William B. Stanley and others.

As to interrogatory 8th, these defendants, further answering, say that Jesse Drafts, the deceased, on the 1st day of December, 1862, and within twelve months previous thereto, owned no shares and no more or other shares; and that between the 1st day of December, 1862, and the 22d day of December, 1869, the said deceased owned no shares additional to the foregoing, as far as these defendants know or can ascertain.

108 DISTRICT OF SOUTH CAROLINA:

Wade A. Lovick and J. D. A. Kibler, the defendants herein named, being duly sworn, say that the foregoing schedule and the answer which it completes and forms part of are true to their own knowledge, except as to those matters therein stated on information and belief, and as to those matters they believe them to be true.

WADE A. LOVICK.
JOHN. D. A. KIBLER.

Sworn to before me this 29 day of March, 1873.

THOMAS J. LA MOTTE,
U. S. Com's'r S. C. Dist.

Schedule of Charles Logan to the answer of W. B. Stanley and others.—Filed 12 Nov., 1872.

In the U. S. circuit court. In equity.

UNITED STATES OF AMERICA,
South Carolina District:

J. & T. GREEN, OF MISSISSIPPI,
vs.
CYRUS H. BALDWIN, RECEIVER OF THE Exchange Bank of Columbia, J.P. Carroll, et als. } Bill of complaint.

109 Schedule of Charles Logan, to be filed with, make part of, and complete the answer of William B. Stanley and others as to this defendant.

As to interrogatories 1 and 3, this defendant has already answered.

As to interrogatory 4, this defendant answers that he owned fifty shares on 1st Dec., 1862.

As to interrogatory 5, this defendant answers that he transferred no shares between 1st Dec., 1862, & Dec., 1869, the dates mentioned.

As to interrogatory 6, this defendant answers: No shares.

As to interrogatory 7, this defendant answers: No shares.

STATE OF SOUTH CAROLINA,
County of Richland:

Charles Logan, the defendant herein named, being duly sworn, says that the foregoing schedule and the answer which it completes and forms part of are true to his own knowledge, except as to those matters therein stated on information and belief, and as to those matters he believes them to be true.

CHAS. LOGAN.

Sworn to and subscribed before me this 31st day of Oct., 1872.

ALBERT M. BOOZER,
United States Commissioner District of South Carolina.

110 *Schedule of J. P. Southern to answer of W. B. Stanley and others.- Filed 25 October*, 1872.

In the U. S. circuit court. In equity.

UNITED STATES OF AMERICA,
South Carolina District:

J. & T. GREEN, OF MISSISSIPPI,
vs.
CYRUS H. BALDWIN, RECEIVER OF THE Exchange Bank of Columbia, J. P. Carroll, et als.
} Bill of complaint.

Schedule of J. H. Southern, to be filed with, make part of, and complete the answer of William B. Stanley and others as to this defendant.

In regard to the matters inquired of in interrogatories 1 and 3, this defendant has already answered.

As to the matters inquired of in interrogatories 4, 5, 6, and 7, this defendant says, that all his private books and papers were destroyed during the late war, wherefore he is compelled to answer from memory only; that to the best of his recollection he owned, on the 1st day of December, 1862, sixty or eighty shares; that soon after he bought 111 more, and continued buying and selling until the close of the war; that he sold and transferred, on the 14th day of April, 1863, two hundred and eighty shares, but does not know to whom, and his impression is that the above transaction left him very few shares, probably not exceeding twenty or twenty-five shares.

STATE OF SOUTH CAROLINA,
County of Richland:

J. P. Southern, the defendant herein named, being duly sworn, says that the foregoing schedule and the answer which it completes and forms part of are true to his own knowledge, except as to those matters which are therein stated on information and belief, and as to those matters he believes them to be true.

J. P. SOUTHERN.

Sworn to before me this 19th day of October, 1872.

THOMAS J. LA MOTTE,
U. S. Com's'r S. C. Dist.

Schedule of A. B. Springs to the answer of W. B. Stanley and others.—Filed 12 November, 1872.

In the U. S. circuit court. In equity.

UNITED STATES OF AMERICA,
South Carolina District:

112 Schedule of A. B. Springs, to be filed with, make part of, and complete the answer of William B. Stanley and others, as to this defendant.

As to interrogatories 1 and 3, this defendant has already answered.

As to interrogatory 4, this defendant answers that he owned two hundred shares.

As to interrogatory 5, this defendant answers that he transferred no shares between the dates mentioned.

As to interrogatory 6, this defendant answers: No shares.

As to interrogatory 7, this defendant answers: No shares.

STATE OF NORTH CAROLINA,
County of Mecklenburg:

A. B. Springs, the defendant herein named, being duly sworn, says that the foregoing schedule and the answer which it completes and forms part of are true to his own knowledge, except as to those matters therein stated on information and belief, and as to those matters he believes them to be true.

A. B. SPRINGS.

Sworn to before me this 29th day of Oct., 1872.

F. W. AHRENS,
U. S. Commissioner for the Western Dist. of No. Ca.

113 *Schedule of Wm. McGuinness to the answer of W. B. Stanley and others.—Filed 25 Oct., 1872.*

In the United States circuit court. In equity.

UNITED STATES OF AMERICA,
South Carolina District:

J. & T. GREEN, OF MISSISSIPPI,
vs.
CYRUS H. BALDWIN, RECEIVER OF THE Exchange Bank of Columbia, J. P. Carroll, et als.

Schedule of William M. McGuinness, to be filed with, make part of, and complete the answer of William B. Stanley and others as to this defendant.

As to interrogatories 1 and 3, this defendant has already answered.

As to interrogatory 4, this defendant answers that he owned eleven shares, to the best of his knowledge.

As to interrogatory 5, this defendant answers that the above shares were transferred by him on the 3d day of February, 1864, to Dennis McGuinness, "as trustee for my then wife."

As to interrogatory 6, this defendant answers: No shares.

114 As to interrogatory 7, this defendant answers: No shares.

STATE OF SOUTH CAROLINA,
County of Richland:

William M. McGuinness, the defendant herein named, being duly sworn, says that the foregoing schedule and the answer which it completes and forms part of are true to his own knowledge, except as to those matters therein stated on information and belief, and as to those matters he believes it to be true.

WM. McGUINNESS.

Sworn to before me this 21st day of October, 1872.

THOMAS J. LA MOTTE,
U. S. Com'r S. C. Dist.

Schedule of J. H. Kinard.—Filed 15 *Mch.*, 1873.

In the U. S. circuit court. In equity.

UNITED STATES OF AMERICA,
South Carolina District:

J. & T. GREEN, OF MISSISSIPPI,
vs.
CYRUS H. BALDWIN, RECEIVER OF THE Exchange Bank of Columbia, J. P. Carroll, et als.

115 Schedule of John H. Kinard, to be filed with, make part of, and complete the answer of William B. Stanley and others as to this defendant.

As to interrogatories 1 and 3, this defendant has already answered.

As to interrogatory 4, this defendant answers that, to the best of his remembrance and belief, he owned about twenty-five shares, but he cannot be certain as to the exact number, nor has he been able to ascertain the exact number.

As to interrogatory 5, this defendant answers: No.

As to interrogatory 6, this defendant answers, he did not.

As to interrogatory 7, this defendant answers, he did not.

STATE OF SOUTH CAROLINA,
County of Richland:

John H. Kinard, the defendant herein named, being duly sworn, says that the foregoing schedule and the answer which it completes and forms part of are true to his own knowledge, except as to those matters therein stated on information and belief, and as to those matters he believes them to be true.

J. H. KINARD.

Sworn to before me this day of March, 1873.

THOMAS J. LA MOTTE,
U. S. Comr. S. C. Dist.

116 *Schedule of E. P. Herndon, admx., to answer of W. B. Stanley et. als.*

In the U. S. circuit court. In equity.

UNITED STATES OF AMERICA,
South Carolina District :

J. & T. GREEN, OF MISSISSIPPI,
vs.
CYRUS H. BALDWIN, RECEIVER OF THE Exchange Bank of Columbia, J. P. Carroll, et als. } Bill of complaint.

Schedule of Elizabeth L. Herndon, administratrix of the estate of Zachariah P. Herndon, deceased, to be filed with, make part of, and complete answer of William B. Stanley and others.

As to interrogatory 8th, this defendant, further answering, says that Zachariah P. Herndon, deceased, on the 1st day of December, 1862, and within twelve months previous thereto, own 827 shares, and no more or other shares; and that between the 1st day of December, 1862, and the 22nd day of December, 1869, the said deceased owned no shares additional to the foregoing.

E. L. HERNDON.

117 STATE OF SOUTH CAROLINA,
County of Union :

Elizabeth L. Herndon, the defendant herein named, being duly sworn, says the foregoing schedule and the answer which it completes and forms part of are true to *his* own knowledge, except as to those matters therein stated on information and belief, and as to those matters *he* believes them to be true.

E. L. HERNDON.

Sworn to before me this 13 day of Nov., 1872.
[SEAL.] BENJ. WOFFORD,
Probate Judge.

Schedule of Lewis Levy to answer of W. B. Stanley and others.—Filed 25 *October*, 1872.

In the U. S. circuit court. In equity.

UNITED STATES OF AMERICA,
South Carolina District :

J. & T. GREEN, OF MISSISSIPPI,
vs.
CYRUS H. BALDWIN, RECEIVER OF THE Exchange Bank of Columbia, J. P. Carroll, et als. } Bill of complaint.

118 Schedule of Lewis Levy, to be filed with, make part of, and complete the answer of William B. Stanley and others as to this defendant.

As to interrogatories 1 and 3, this defendant has already answered.

As to interrogatory 4, this defendant answers: Two hundred and forty-three shares.

As to interrogatory 5, this defendant answers: None.
As to interrogatory 6, this defendant answers: None.
As to interrogatory 7, this defendant answers: None.

STATE OF SOUTH CAROLINA,
County of Richland:

Lewis Levy, the defendant herein named, being duly sworn, says that the foregoing schedule and the answer which it completes and forms part of are true to his own knowledge, except as to those matters therein stated on information and belief, and as to those matters he believes them to be true.

L. LEVY.

Sworn to before me this 21st day of Oct., 1872.

THOMAS J. LA MOTTE,
U. S. Com's'r S. C. Dist.

119 And on the 19th day of October, A. D. 1872, came into court the said Andrew Crawford, John English, and C. D. Melton, by James H. Rion, their solicitor, and filed their answer to the said bill of complaint; which answer is in words and of the tenor following:

Answer.

THE UNITED STATES OF AMERICA,
South Carolina District:

Fourth circuit. In equity.

The joint and several answer of Andrew Crawford, John English, and of C. D. Melton, sued as executor of the estate of John Bryce, deceased, to the bill of complaint of Joshua Green and Thomas Green, citizens of the State of Mississippi, complainants, against these defendants and others.

These defendants saving and reserving to themselves, now and at all times hereafter, all manner of benefit and advantage of exception to the many errors and insufficiencies in said bill contained, for answer thereto, or to so much and such parts thereof as these defendants are advised it is material or necessary for them to make answer unto, they answering say:

That they did not hold or own on the first day of December, 1862, or within twelve months previous thereto, nor have they held, owned, 120 bought, or sold, at any time since the said first day of December, 1862, nor do they now hold or own, any shares in the Exchange Bank of Columbia in any capacity whatever.

And these defendants, having fully answered the premises, pray to be hence dismissed with their reasonable costs and charges in this behalf sustained.

JAS. H. RION,
Defendants' Solicitor.

STATE OF SOUTH CAROLINA,
County of Richland:

Personally appeared Andrew Crawford, John English, and C. D. Melton, who, being severally duly sworn, said, each for himself, that the statements contained in the foregoing answer are true so far as the same are stated of their own knowledge, and as to those matters therein stated on information and belief they believe them to be true.

ANDREW CRAWFORD.
JOHN ENGLISH.
C. D. MELTON.

Sworn to and subscribed before me this 5th day of October, A. D. 1872.

THOMAS J. LA MOTTE,
U. S. Com's'r S. C. Dist.

121 And on the 22d day of November, A. D. 1872, the said J. & T. Green, by their solicitors, Corbin & Stone, filed their replication in the said court to the answer of Cyrus H. Baldwin; which replication is in words and of the tenor following:

Replication.

THE UNITED STATES OF AMERICA,
South Carolina District, Fourth Circuit:

J. & T. GREEN, OF MISSISSIPPI,
vs.
CYRUS H. BALDWIN, RECEIVER, ET AL. } In equity.

The replication of Joshua Green and Thomas Green, complainants, to the answer of Cyrus H. Baldwin, one of the defendants herein.

I. These repliants, saving and reserving to themselves all and all manner of advantage of exception to the manifold insufficiencies of the said answer, for replication thereunto, say that they will aver and prove their said bill to be true, certain, and sufficient to be answered unto; and that the said answer of said defendant is uncertain, untrue, and insufficient to be replied to by these repliants; without this, that there
122 is any other matter or thing whatever in the said answer contained material or effectual in the law to be replied unto, confessed, and avoided, traversed or denied, is true; all which matters and things these repliants are and will be ready to aver and prove, as this honorable court shall direct, and humbly pray as in and by their said bill they have already played.

II. And as to the plea of the said defendant, by him first above pleaded, wherein he says that the cause of action herein did not accrue within four years from the filing of the said bill in this suit, said complainants for replication thereto say that the cause of action did accrue within four years before the exhibiting or filing of said bill, and this the said repliants are and will be ready to aver and prove.

III. And as to the plea of the said defendants, by him secondly above pleaded, wherein he says that the complainants did not exhibit their bill within six months after the time that any supposed liability under the penalty imposed by the statute aforesaid was supposed to have accrued by the 4th section of the act of assembly referred to, the *the*
123 complainants demur, and for cause of demurrer do show that the said section does not impose a penalty, but a liability, upon the stockholders of said bank, which liability is in the nature of a contract between the stockholders and the bill-holders of the bank, and can be enforced by any holder of the bills of credit of said bank, in the event

of the non-payment by the bank of its bills of credit, and that the statutory limitation of suits for penalties does not apply to such a contract as complainants seek to enforce. And these complainants humbly pray the judgment of the court as to the said plea.

IV. As to the plea of the said defendant, by him thirdly above pleaded, wherein he says that the liability created by the fourth section of the said act of December, 16th, 1852, has become and was in law removed and annulled by the said sections of said acts of the general assembly therein referred to, the said complainants do demur, and for cause of demurrer show that the liability created by said fourth section of the said act of December 16th, 1852, has not been annulled or removed by operation of
said sections of said acts referred to by defendants in his said plea.
124 And these complainants humbly pray the judgment of the court
as to the said plea.

V. And as to the plea of the said defendant, by him fourthly above pleaded, wherein he says that the act of March 13, 1869, by him referred to, in no manner or words provided for the continuation of the liability of the stockholders of the said bank after the forfeiture of its corporate rights and privileges, the said complainants demur, and for cause of demurrer do show that the statutory liability of the stockholders of said bank was fixed by the fourth section of the act of December 16th, 1852; said liability was and is in the nature of a contract between the stockholders of the bank and the holders of the bills of credit thereof, and said liability is still of force in favor of complainants as holders of the bills of said bank, notwithstanding the said act of March 13th, 1869, does not expressly provide for the continuance of the liability. And these complainants humbly pray the judgment of the court as to the plea to which they have demurred as aforesaid.

VI. And as to the plea of the said defendant, by him fifthly above pleaded, wherein he says that he is informed and believes that com-
plainants obtained the notes or bills of the said bank, now held
125 by them, long after they had ceased to be redeemable in gold or
silver, or to be current as money, for a price far below their value,
&c., and that complainants are in no event entitled to receive more than they actually paid for said bills, with interest, and that complainants should be required to make discovery, &c., the said complainants, for replication thereto, say that they obtained the said notes or bills, which they hold, in the due course of trade and for valuable consideration, and are entitled to recover the par value of said bills or notes from the bank, if the bank is solvent, or if its assetts in the hands of the defendant, as receiver, are sufficient to pay said notes, and from the stockholders if the said bank be insolvent. Complainants, further replying, say that the said bills are genuine, and that they are the lawful possessors thereof; and further than this, they should not be required to make discovery as to said bank-bills, and this the said complainants are and will be ready to aver and prove.

VII. And as to so much of the answer to said bill as states that the said defendant Cyrus H. Baldwin, of his own knowledge, knows that
previous to the 16th day of April, 1870, defendant, as receiver, &c.,
126 had in his possession a large amount of the bills of said bank be-
longing to sundry persons, and had deposited the same with
Messrs. Scott, Williams & Co., of Columbia, for safe-keeping, from whose vault said bills were stolen, &c., and therefore complainants should be required to prove that these bills were not any of the said stolen bills, the said complainants, for replication thereto, say that their said bills were not any of the stolen bills; if the fact be true as stated, of which

complainants know nothing, except as stated in the said answer, that any of the bills of said bank were stolen as aforesaid. Complainants further say that they received their bills in due course of trade, for value, and further they should not be required to prove; and this the said repliants are and will be ready to aver and prove.

And the said complainants, having fully replied to the answer of the said defendant, and having replied or demurred to the said several pleas by him pleaded, humbly pray, as in and by their said bill they have already prayed.

CORBIN & STONE,
Complainants' Solicitors.

127 And on the 22nd day of November, A. D. 1872, the said J. & T. Green, by Corbin & Stone, their solicitors, filed their replication to the answers of L. D. Childs, Charles Alston, sr., & Wm. Alston Pringle, executors, & Pettus W. Chick; which replication is in words and of the tenor following:

Replication.

THE UNITED STATES OF AMERICA,
South Carolina District, Fourth Circuit:

J. & T. GREEN, OF MISSISSIPPI,
vs.
CYRUS H. BALDWIN, RECEIVER, &c., et al.
} Replication. In equity.

The replication of Joshua Green and Thomas Green, complainants, to the answers of L. D. Childs, Charles Alston, and William Alston Pringle, executors of the will of Arthur P. Hayne, deceased, and Pettus W. Chick, four of the defendants in the above-entitled action.

I. These repliants, saving and reserving to themselves all and all manner of advantage of exception to the manifold insufficiencies of the said answers, for replication thereunto, say that they will aver
128 and *and* prove their said bill to be true, certain, and sufficient to be answered unto; and that the said answers of said several defendants are uncertain, untrue, and insufficient to be replied to by these repliants; without this, that there is any other matter or thing whatsoever in the said answers contained, material or effectual in the law to be replied unto, confessed and avoided, traversed or denied, is true; all which matters and things these repliants are and will be ready to aver and prove as this honorable court shall direct, and humbly pray as in and by their said bill they have already prayed.

II. An' as to the plea of the said defendant Pettus W. Chick, by him separately pleaded, wherein he states that plaintiffs have not recovered judgment upon their said bills against the said Exchange Bank of Columbia, the said complainants demur, and for cause of demurrer do show that it was not necessary to obtain a judgment upon the said bills against said bank before bringing this suit; that it appears by complainants' bill that said bank is insolvent; that proceedings have been had in the State court to forfeit its charter by reason of its failure
129 to pay its bills of credit, and that by the State court the property and assetts of the said bank have been placed in the hands of a receiver, who is a party to this action, and who is required to answer concerning the property and assets of said bank.

And these complainants humbly pray the judgment of the court as to the said plea.

III. And as to the plea of the said several defendants, by them severally pleaded, wherein they say that the cause of action herein did not accrue within four years, said complainants, for replication thereto, do say that the cause of action did accrue within four years, and this the said repliants are and will be ready to aver and prove.

IV. And as to the plea of the said several defendants, by them severally pleaded, wherein they say that the complainants did not commence their action within six months after the defendants became liable, &c., the complainants demur, and for cause of demurrer show that the said fourth section of the act of assembly by said defendants referred to does not impose a penalty, but a liability, upon the stockholders of said bank, which liability is in the nature of a contract between the stock-
130 holders and the bill-holders of the bank, and the statutory limitation of suits for penalties does not apply to such a contract as complainants seek to enforce against the defendants. And these complainants humbly pray the judgment of the court as to the said plea.

V. And as to the plea of the said several defendants, by them pleaded, wherein they say that the liability created by the said fourth section of the said act of December 16, 1852, has become and was in law removed and annulled by the provisions of the said sections of the acts of general assembly referred to in the said plea, the said complainants do demur, and for cause of demurrer show that the liability created by said fourth section of the act of December 16th, 1852, has not been annulled or removed. And these complainants humbly pray the judgment of the court as to the said plea.

VI. And as to the plea of the said several defendants, by them severally pleaded, wherein they say that the assets of the said Exchange Bank have not yet been exhausted, nor has their value been ascertained, complainants, for replication thereto, say that it appears by the said bill, and these complainants are ready to prove, that
131 the said Exchange Bank is insolvent; that proceedings have been instituted in the State court to forfeit its charter because of its failing to pay its bills of credit; that a receiver has been appointed by the State court, who has possession of the property and assets of said bank, and that said receiver is a party defendant to this action, and is required to answer as to the said property and assets in his hands as such receiver. And complainants further say that the assets of said bank are insufficient to pay the bills held by them, and they are entitled to recover against the defendants, as stockholders, enough to pay said bills, provided the amount adjudged against them severally does not exceed the sum of fifty dollars for each share held by them respectively. And this the said complainants are and will be ready to prove as this honorable court may direct.

VII. And as to the plea of the said defendants Charles Alston and William Alston Pringle, executors, and Pettus W. Chick, by them severally pleaded, wherein they say that it has not been ascertained what is the amount of the liabilities of the said bank, the said com-
132 plainants, for replication thereto, say that the liabilities of the said bank are far in excess of its assets; that said bank has refused to pay the bills of credit issued by it and now held by complainants, and the receiver of said bank appointed by the State court has also refused to pay said bills, and complainants now seek to recover of defendants as stockholders the amount necessary to pay said bills as permitted by section 4 of the act of the general assembly of December 16th, 1852, here-

tofore in said complainants' bill set forth; and this the said repliants are and will be ready to aver and prove.

VIII. And as to the plea of the said several defendants, by them sev-
erally pleaded, wherein they say that the act of March 13, 1869, by
them referred to, in no manner or words provided for the continuation
of the liability of the stockholders of the said bank after the forfeiture
of its corporate rights and privileges, the said complainants demur, and
for cause of demurrer do show that the statutory liability of the stock-
holders of said bank was fixed by the fourth section of the act of De-
cember 16, 1852, in said complainants' bill referred to, which lia-
133 bility is in the nature of a contract between the said defendants
as stockholders, and these complainants, as bill-holders of said
bank, and is of force notwithstanding the said act of March 13, 1869,
does not expressly provide for the continuance of such liability, and the
said complainants humbly pray the judgment of the court as to the said
plea.

IX. And as to the plea of the said several defendants, by them sev-
erally above pleaded, wherein they say that complainants obtained the
notes and bills of said bank after they had ceased to be redeemable, &c.,
at a price far below their value, &c., and are not entitled to receive
more than they actually paid for said bills, with interest, and that com-
plainants should make discovery, &c., the said complainants, for replica-
tion thereto say, that they obtained the said notes and bills which they
now hold, in due course of trade, for value, and are entitled to receive
the face-value thereof from the bank, if solvent, or if its assets in the
hands of said receiver are sufficient to pay the same, and if the said
bank is insolvent and its assets insufficient, as complainants allege to
be the fact, then they are entitled to receive from the defendants, as
stockholders, the face-value thereof, provided the amount to be
134 paid by each of said defendants does not exceed the sum of fifty
dollars upon each share of stock held by them respectively. Com-
plainants, further replying, say that their bills are genuine, and they
are the lawful holders and possessors thereof, and further than this
they should not be compelled to make discovery as to said bills or notes;
and this the said repliants are and will be ready to aver and prove.

X. And as to the plea of the said Charles Alston, sr., and William
Alston Pringle, by them jointly and severally pleaded, wherein they say
that the said Exchange Bank, after it had failed and become insolvent,
issued a large amount of its notes or bills, for which issue no individual
or personal liability attached to the shareholders in said bank, and that
complainants should be required to prove that the bills they hold are
not any of the notes so issued, the complainants, for replication thereto,
say that they do not know of any such alleged issue of notes after the
failure or insolvency of said bank, except as stated in said plea, and
they can neither admit nor deny the same; they further say that the
bills held by them, on which they seek to recover, were issued prior
135 to such failure or insolvency, and not afterwards; and this the
said repliants are and will be ready to aver and prove.

XI. And as to the plea of the said Charles Alston, sr., and William Alston Pringle, by them jointly and severally pleaded, wherein they say that said complainants failed to present their demands against the estate of said Arthur P. Hayne, deceased, of which they are executors, as required by the notice given by them, and that they as executors have fully administered the said estate before the commencement of this action, except as to one hundred and ninety-three dollars and thirty-four cents, &c., the said complainants, for replication thereto, say that they

know nothing of the facts stated in said plea, of their own knowledge, and pray strict proof thereof, and that if the said Arthur P. Hayne was a stockholder in said bank at the time of its failure, as complainants allege, they pray judgment against said executors for such portion of the said estate in their hands, subject to his debts, as may be necessary to pay their said demands, provided such amount shall not exceed fifty dollars upon each share of capital stock held by the said Arthur
136 P. Hayne, deceased. And the said complainants pray as in their said bill they have already prayed.

XII. And as to so much of the answers of the said several defendants to the said bill as states that, previous to the 16th day of April, 1870, the receiver of the said bank had redeemed a large amount of the bills of said bank, and had deposited them for safe-keeping with Messrs. Scott, Williams & Co., of Columbia, from whom they were stolen, &c., on the night of the same day, and that complainants should be required to prove that their bills are not any of the said stolen bills, &c., these complainants, for replication thereto, say that they have no knowledge of the fact of any portion of the bills of said bank having been stolen, except what is stated in the said defendants' answer, and neither admit nor deny the same; that defendants received their bills in due course of trade, for value, and further than this complainants should not be required to prove. And this the said complainants are and will be ready to aver and prove.

XIII. And as to the seperate plea of the defendant Pettus W.
137 Chick, wherein he says that complainants have not alleged that they held their bills at the time said defendant sold his stock in said bank, nor at any time within twelve months subsequent thereto, the said complainants demur, and for cause of demurrer do show that the statutory liability of the stockholders of said bank is fixed by the act of December 16, 1852, before cited, and the contract between the stockholders and bill-holders of said bank, declared by the fourth section of said act, can be enforced by any holder of the bills of said bank against any stockholder having and owning shares of capital stock of said bank at the time of its failure, or who should have been interested therein at any time within twelve months previous to such failure. Wherefore these complainants humbly pray the judgment of the court as to the said plea.

XIV. And as to the plea of the said separate defendant Pettus W. Chick, by him pleaded, wherein he says that complainants do not allege want of knowledge of the failure or insolvency of the said bank when they became holders of the said bank-bills, said complainants, for
138 replication thereto, say that they received the said bills of the said bank in due course of trade, for value, and are entitled to recover the face value thereof. And this the said complainants are and will be ready to aver and prove.

XV. And as to the plea of the said separate defendant Pettus W. Chick, by him pleaded, wherein he says that the plaintiffs have not alleged that they held the said bank-bills at the time they pretend the said bank failed, the said complainants, for replication thereto, say that they obtained the said notes or bank-bills in the due course of trade, but when each particular bill was received they do not now recollect, and therefore cannot say whether it was before or after the failure of the said bank. They further say that they received the same for value and are entitled to the face value thereof. And this the said repliants are and will be ready to aver and prove.

Wherefore these complainants, having fully replied to the said answers and pleas of the said defendants or demurred thereto, humbly pray as in and by their said bill they have already prayed.

CORBIN & STONE,
For Complainants.

139 And on the 22nd day of November, A. D. 1872, the said J. & T. Green, by Corbin & Stone, their solicitors, filed their replication to the answers of J. P. Carroll, Maximilian La Borde, T. J. Robertson, W. B. Stanley, William Wallace, A. W. Kennedy, William Martin, exr., W. A. Lovick, & J. D. A. Kibler, admnrs., Charles Logan, J. P. Southern, A. B. Springs, Wm. M. McGuinness, J. H. Kinard, E. L. Herndon, admx., & Lewis Levy; which replication is in the words and of the tenor following:

Replication.

THE UNITED STATES OF AMERICA,
South Carolina District, Fourth Circuit:

J. & T. GREEN, OF MISSISSIPPI,
vs.
CYRUS H. BALDWIN, RECEIVER, ET AL.
In equity.

The replication of Joshua Green and Thomas Green, complainants, to the answers of James P. Carroll, Maximilian La Borde, Thomas J. Robertson, W. B. Stanley; William Wallace, as executor and personally; A. W. Kennedy; William Martin, executor, &c.; William A. Lovick and J. D. A. Kibler, administrators, &c.; Charles Logan, J. 140 P. Southern, A. B. Springs, William McGuinness, J. H. Kinard; Elizabeth L. Herndon, administratrix, and Lewis Levy, defendants.

I. These repliants, saving and reserving to themselves all and all manner of advantage of exception to the manifold insufficiencies of the said answer, for replication thereunto say that they will aver and prove their said bill to be true, certain, and sufficient to be answered unto; and that the said answer of said defendant is uncertain, untrue, and insufficient to be replied to by these repliants; without this, that there is any other matter or thing whatsoever in the said answer contained material or effectual in the law to be replied unto, confessed and avoided, traversed or denied, is true; all which matters and things these repliants are and will be ready to aver and prove, as this honorable court shall direct, and humbly pray as in by their said bill they have already prayed.

II. And as to the plea of the defendant Thomas J. Robertson, wherein he says that complainants have recovered no judgment upon the said bills against the said Exchange Bank, the said complainants do demur, and for cause of demurrer show that it was not necessary to obtain a judgment against the said bank on the said bills of credit, inasmuch as it 141 appears by said bill of complaint that said Exchange Bank of Columbia is insolvent; that judicial proceedings had been had in the State courts to forfeit its charter by reason of its not paying its bills of credit; that a receiver had been duly appointed by the State court of the property and assets of said bank, and that said receiver is a party to this action. And these complainants humbly pray the judgment of the court as to the said plea.

III. And as to the plea of the said several defendants by them pleaded wherein they say that the cause of action did not accrue within four years before the commencement of this action, said complainants do reply that the cause of action did accrue within four years before the commencement of this action, and this the said repliants are and will be ready to aver and prove.

IV. And as to the plea of the said several defendants wherein they say that the complainants did not exhibit their bill within six months after the time that any supposed liability had accrued under the penalty imposed by the said fourth section of the said act of the general assembly referred to, the complainants demur, and for cause of demurrer do show that the said section does not impose a penalty but a liability upon the stockholders of said bank, which liability is in the nature 142 of a contract between the stockholders and the bill-holders of the bank, and can be enforced by any holder of the bills of credit of said bank in the event of the non-payment by the bank of its bills of credit, and that the statutory limitation of suits for penalties does not apply to such a contract as complainants seek to enforce. And these complainants humbly pray the judgment of the court as to the said plea.

V. And as to the plea of the said several defendants by them pleaded wherein they say that the liability created by the said fourth section of the said act of December, 16, 1852, has become and was in law removed and annulled by the provisions of the said sections of said acts of the general assembly referred to in said plea, the said complainants do demur, and for cause of demurrer show that the liability created by said fourth section of the said act of December 16, 1852, has not been annulled or removed by the provisions of the said sections of the above referred to acts. And these complainants humbly pray the judgment of the court as to the said plea.

VI. And as to the plea of the said several defendants by them pleaded wherein they say that the assets of the said Exchange Bank have not yet been exhausted, nor has their value been ascertained, complainants, 143 for replication thereto, say that it appears by the said bill, and these complainants are ready to prove, that the said Exchange Bank is insolvent; that a receiver has been duly appointed by the State court, who has the possession and custody of its property and assets; that said receiver is a party defendant to the bill herein and is required to answer as to the character and value of the said property and assets in his hands as receiver; and that a decree is asked against the said defendants only for such sum, not exceeding fifty dollars upon each share of capital stock of said bank held by them respectively, as shall appear to the court necessary to satisfy their just demands after the assets of the bank shall have been wholly exhausted, and this the said repliants are and will be ready to aver and prove.

VII. And as to the plea of the said several defendants, by them pleaded, wherein they say that it has not been ascertained what is the amount of the liabilities of the said bank, the said complainants, for replication thereto, say that the liabilities of the said bank are far in excess of its assets; that said bank has had a receiver of its property and assets appointed by the State court, who has refused to pay 144 the bills of credit held by the said complainants; that said bank has also refused to pay its said bills held by complainants, and that complainants have a right, under the provisions of the said fourth section of the said act of December 16th, 1852, to recover from the said defendants such amount as may be necessary to pay the said bills held by them, provided such amount does not exceed the sum of fifty dollars upon each share of capital stock held by them respectively; and this the said repliants are and will be ready to aver and prove.

VIII. And as to the plea of the said several defendants, wherein they say that the act of March 13th, 1869, by them referred to, in no manner or words provided for the continuation of the liability of the stockholders of the said bank after the forfeiture of its corporate rights and privileges, the said complainants demur, and for cause of demurrer do show that the statutory liabilities of the stockholders of said bank was fixed by the fourth section of the act of December 16th, 1852; said liability was and is in the nature of a contract between the stockholders of the bank and the holders of the bills of credit thereof, and said liability is still of force in favor of complainants as holders of the
145 bills of said bank, notwithstanding the act of March 13th, 1869, does not expressly provide for the continuance of the liability. And these complainants humbly pray the judgment of the court as to the plea to which they have demurred as aforesaid.

IX. And as to the plea of the defendants, by them severally above pleaded, wherein they say that they are informed and believe that complainants obtained the notes and bills of said bank now held by them long after they had ceased to be redeemable in gold or silver, or to be current as money, for a price far below their value, &c., and that complainants are in no event entitled to receive more than they actually paid for said bills, with interest, and that complainants should be required to make discovery, &c., the said complainants, for replication thereto, say that they obtained the said notes and bills which they hold in the due course of trade, and for valuable consideration, and are entitled to recover the par value of said bills and notes from the bank, if solvent, which complainants deny, and from the stockholders if the said bank is insolvent, and its assets in the hands of the said receiver are insufficient to pay said notes and bills in full. Complainants, further replying, say that
146 the said bills are genuine, and that they are the lawful owners and possessors thoreof, and further than this they should not be required to make discovery as to said bank-bills and notes; and this the said complainants are, and will be, ready to aver and prove.

X. And as to so much of the answer to said bill as states that, previous to the 16th day of April, 1870, the receiver of the said bank had redeemed a large amount of the bills of said bank, and had deposited the same for safe-keeping with Messrs. Scott, Williams & Co., of Columbia, (or as stated in the joint and several answers of W. B. Stanley, William Wallace, personally and as executor; A. W. Kennedy, William Martin, executor, &c.; William A. Lovick, and J. D. A. Kibler, administrators, &c.; Charles Logan, J. P. Southern, A. B. Springs, William M. McGuinness, J. H. Kinard, E. L. Herndon, administratrix, &c., and Lewis Levy, that previous to the 16th day of April, 1870, there had been redeemed a large amount of the bills of the said bank, so that, with the exception of such bills as were retained by the stockholders for their own protection, there were not outstanding and unredeemed the
147 sum of five thousand dollars; that said bills so redeemed had been deposited for safe-keeping with Messrs. Scott, Williams & Co., of Columbia,) and on the night of said day the vault of the said Messrs. Scott, Williams & Co., was broken open and said bills stolen, &c., and that complainants should be required to prove that their bills have not been redeemed, or are not the said stolen bills, these complainants, for replication thereto, say that they have no knowledge of the facts stated in said portion of their answer herein referred to, except as stated by the said defendants in said answer, and can neither admit nor deny the same. That complainants received their bills in due course of trade, for value, and further than this these complainants should not be compelled

to prove. And this the said repliants are, and will be, ready to aver and prove.

And the said complainants, having fully replied to the said answers of the said several defendants, and having replied to or demurred to the pleas so as above pleaded by them, humbly pray as in and by their said bill they have already prayed.

CORBIN & STONE,
For Complainants.

148 And on the 22nd day of November, A. D. 1872, the said J. & T. Green, by Corbin & Stone, their solicitors, filed their replication to the answers of John W. Parker, C. D. Melton, Andrew Crawford, and John English; which replication is in words and of the tenor following:

Replication.

UNITED STATES OF AMERICA,
South Carolina District, Fourth Circuit:

JOSHUA GREEN & THOMAS GREEN, OF MISSISSIPPI,
vs.
CYRUS H. BALDWIN, RECEIVER OF THE EXCHANGE Bank of Columbia, et al.
} In equity.

The replication of Joshua Green and Thomas Green, complainants, to the separate answers of John W. Parker, and the joint and several answers of C. D. Melton, Andrew Crawford, and John English, defendant'.

These repliants, saving and reserving to themselves all and all manner of advantage of exception to the manifold insufficiencies of
149 the said answers, for replication thereunto, say that they will
and prove their said bill to be true, certain, and sufficient to be answered unto, and that the said answers of the said defendants *is* uncertain, untrue, and insufficient to be replied to by these repliants; without this, that there is any other matter or thing whatsoever in the said answer contained material or effectual in the law to be replied unto, confessed and avoided, traversed or denied, is true; all which matters and things these repliants are and will be ready to aver and prove as this honorable court shall direct, and humbly pray as in and by their said bill they have already prayed.

CORBIN & STONE,
For Repliants.

And on the 20th day of December, A. D. 1872, came into court the said J. & T. Green, by Corbin & Stone, their solicitors, and obtained the following order of reference; which order is in words and of the tenor following:

Order of reference.

UNITED STATES OF AMERICA,
South Carolina District, 4th Circuit:
November term, A. D. 1872.

150 J. & T. GREEN
agt.
CYRUS H. BALDWIN, RECEIVER, &C., J. P. Carroll, L. D. Childs, et al.
} In equity.

The pleadings in this cause having been closed, and it appearing that certain issues of fact are made thereon, it is, on motion of Corbin & Stone, solrs. for orators, ordered that John Ficken, esq., of Charleston, S. C., be appointed special master to take the testimony and report the facts to this court at its next term.

HUGH L. BOND,
Ct. Judge.

CORBIN & STONE,
Solrs. for Orators.

And on the 3rd day of March, A. D. 1873, came into court the said J. & T. Green, by Corbin & Stone, their solicitors, and the following decree pro confesso; which decree is in words and of the tenor following:

Decree pro confesso.

UNITED STATES OF AMERICA,
South Carolina District, Fourth Circuit:

J. & T. GREEN, PLAINTIFFS,
vs.
CYRUS H. BALDWIN, RECEIVER OF THE Exchange Bank, et al.
} In equity.

151 This cause coming on, &c., in the presence of counsel for the plaintiffs, and whereas it appears from the return of the subpœna ad respondendum that Catharine McFie and F. W. McMaster, two of the defendants herein, were duly served with a copy of the subpœna on the 9th day of August, A. D. 1872, which required them to be and appear before the judges of the circuit court of the United States of the said district at Charleston, on the first Monday of September, A. D. 1872, to make answer to the amended bill of complaint; and said defendants were further required to enter their appearance in this suit in the clerk's office on or before the said first Monday of September, A. D. 1872; otherwise said bill would be taken pro confesso; and, upon reading plaintiffs' bill, duly filed, and upon hearing what was alleged by counsel for the plaintiffs, this court doth order that the plaintiffs' bill be taken pro confesso against the said defendants Catharine McFie and F. W. McMaster.

DANL. HOLBECK,
C. C. C. U. S.

CORBIN & STONE,
For Plffs.
MCH. 3, '73.

152 And on the 1st day of April, A. D. 1873, came into court the said F. W. McMaster and Catherine Macfie, by Jas. H. Rion, their solicitor, and filed their answer to the said bill of complaint; which answer is in words and of the tenor following:

Answer.

UNITED STATES OF AMERICA,
South Carolina District:

Fourth circuit. In equity. 1873.

The joint and several answer of Fitz. W. McMaster and Catherine Macfie, two of the defendants to the bill of complaint of J. & T. Green, complainants, against these defendants and others.

These defendants, saving and reserving to themselves all right of exception to the many errors, uncertainties, and imperfections in said bill of complaint contained, for answer thereunto, or unto so much and such parts thereof as these defendants are advised is material for them to make answer unto, answering, say:

I. That these defendants adopt as part of this answer the answer heretofore filed in this cause, entitled "The answer of William B. Stanley and others," to which they crave reference, as fully and completely 153 as though every word and figure in said answer contained were herein at large set forth.

II. The defendant Fitz. W. McMaster, for himself, says that previous to the year 1858 he owned seventy-five shares of the stock of the Exchange Bank; that in the said year 1858 he sold all of said shares; that he has had no transaction in regard to said bank since he sold said stock, and that he now owns no stock in any capacity whatever.

III. The defendant Catherine Macfie, for herself, says that in September, 1869, she owned one hundred and eighty shares of stock of the said Exchange Bank, which stock she yet owns; that she has had no transactions in regard to the said bank between the first day of December, 1862, and the twenty-second day of December, 1869; and that she has acquired no stock in any capacity whatever, and now owns none, other than the one hundred and eighty shares aforesaid.

And these defendants deny, and so forth, without this, that there is any other matter, cause, or thing in said complainants' said bill of complaint contained material or necessary for these defendants to make answer unto, and not herein and hereby well and sufficiently answered, confessed, and traversed and avoided or denied, is true to 154 knowledge or belief of these defendants; all which matters and things these defendants are ready and willing to aver, maintain, and prove as this honorable court may direct, and humbly pray to be hence dismissed with their reasonable costs and charges in this behalf most wrongfully sustained.

JAS. H. RION,
Defendants' Solicitor.

STATE OF SOUTH CAROLINA,
County of Richland:

Catherine Macfie, the defendant herein named, being severally duly sworn, say, each for himself and herself, that the foregoing answer is true to her own knowledge, except as to those matters therein stated on information and belief, and as to those matters he and she believe it to be true.

CATH'E MACFIE.

Sworn to before me this 29th day of March, 1873.
[SEAL.] F. W. MCMASTER, *Not. Pub.*

SOUTH CAROLINA,
Richland County:

Personally appeared before me F. W. McMaster, one of the defendants herein named, and swears that the foregoing answer as to matters 155 and things therein stated of his own knowledge are true, and as far as derived from information of others he believes them true.

F. W. MCMASTER.

Sworn to before me this 29th March, 1873.

W. S. MONTEITH,
Notary Public.

And on the 10th day of June, A. D. 1873, came into court the said J. & T. Green, by Corbin & Stone, their solicitors, and obtained the following order of publication; which order is in words and of the tenor following:

Order.

UNITED STATES OF AMERICA,
District of South Carolina:

U. S. circuit court, special term. In equity.

J. & T. GREEN *vs.* CYRUS H. BALDWIN, RECEIVER OF THE Exchange of Columbia, J. P. Carroll, L. D. Childs, et al.	Order of publication.

It being represented to the court that there are other parties who have similar claims against the Exchange Bank of Columbia and the stockholders thereof as the above-named plaintiffs, now on motion of
156 Corbin & Stone, solicitors for J. & T. Green, it is ordered—

That all persons having any claim against the Exchange Bank of Columbia on account of bills issued and circulated by said bank, and who desire to enforce their said claim in this cause, do appear and file their said claims in this cause on or before the first Monday in October next.

Ordered further, that this order be published once a week for six weeks in succession in the following papers, to wit: The Columbia Daily Phœnix, published at Columbia, S. C.; the Greenville Republican, published at Greenville, S. C.; and the Morning Chronicle, published at Charleston, S. C.

GEO. S. BRYAN,
U. S. Judge Dist. So. Ca.

10TH JUNE, 1873.

And on the 17th day of June, A. D. 1873, came into court the said J. & T. Greene, by Corbin & Stone, their solicitors, and obtained the following order of amendment to order of publication; which order is in words and of the tenor following:

Order of amendment to order of publication.

UNITED STATES OF AMERICA,
District of South Carolina:

157

J. & T. GREEN *vs.* CYRUS H. BALDWIN, RECEIVER OF THE Exchange Bank of Columbia, J. P. Carroll, L. D. Childs, et al.	In equity.

On motion of Messrs. Corbin & Stone, solicitors for complainants in above-entitled cause, ordered, that the order of June 10th, 1873, in this cause, providing for the calling in of claims against the said Exchange Bank of Columbia, be amended by striking out in the last paragraph of said order the name of "the Columbia Phœnix" and by inserting in place thereof "the Daily Union Herald."

Ordered further, that this order be entered as for the 17th day of June A. D. 1873.

GEO. S. BRYAN,
U. S. Judge Dist. So. Ca.

Testimony.

UNITED STATES OF AMERICA,
South Carolina District, Fourth Circuit:

158 J. & T. GREEN, OF MISSISSIPPI,
against
CYRUS H. BALDWIN, RECEIVER OF THE Exchange Bank of Columbia, J. P. Carroll, L. D. Childs, et al.
} Bill of complaint. In equity.

Reference opened at the office of Messrs. Rion & Thomas, Columbia, S. C., at 11.30 a. m. on Tuesday, 11th March, 1873.

Present, Wm. Stone, Jas. H. Rion, Y. J. Pope, of counsel.

Mr. CYRUS H. BALDWIN, being duly sworn, was examined by Mr W. Stone on behalf of the plaintiffs says:

That he is the receiver of the Exchange Bank—appointed under order of the circuit court for Richland County. In the schedule attached to my answer I report the amount of assets as good, as amounting to nineteen hundred & ten $\frac{20}{100}$ dollars, and I regard them as worth that amount to-day. I have no other assets or securities which are valuable excepting the amount just stated.

(Col. Haskell appeared at this stage of the proceedings, representing the law firm of Pope & Haskell.)

159 The confederate securities reported by me in said schedule are still in my hands, and consist of confederate bonds and treasury notes of probably every issue.

I have a few of the books of the Exchange Bank. I have the general ledger, two bill-ledgers, also individual accounts and bank account books. I have not now, nor did I ever have, any list of the stockholders. The books of the bank in my possession show the circulation of the bank on 19th Nov., 1864. The amount of circulation on that day was three hundred and sixty-seven thousand eight hundred and eighty-seven $\frac{50}{100}$ dollars. I know not the amount of the bank assets on that day, nor of the specie. This circulation was in notes. The books I have cannot furnish amount or character of assets then held. I left the confederacy in November, 1864, on 1st Nov., and the bank was still in operation at that time. At that time no bank here was paying specie. This bank was paying neither specie nor U. S. Treasury notes or legal-tender notes.

Since I have been receiver I have redeemed seventy-one thousand dollars of the notes of the Exchange Bank. I did not pay in full for these bills.

I purchased bills belonging to Harvey Cogswell, on two or three different occasions. I do not remember the amount of bills belonging to Harvey Terry so redeemed by me. Mr. Harvey Terry sold some of these bills to me at prices ranging from 20 cts. to 25 cts. These 160 were sold to me individually and not as receiver. I never as receiver redeemed any bills belonging to Mr. Terry, as far as I can recollect. I do not think I ever paid Mr. Terry as much as 50 cts. for these bills. I may have failed to make entries of some transactions, and this may account for any discrepancy. I cannot recall the names of any other persons who were stockholders in said Exchange Bank excepting such as are parties to the suit.

Cross-examined by Rion:

The seventy-one thousand dollars of the bills redeemed by me were deposited in the vault of Scott, Williams & Co. These bills had no special marks that I recollect. I gave receipts for the amounts of the bills without giving any description of them. Some one or two lots of the bills received and redeemed by me were accompanied by detailed description. I remember a lot of five hundred dollars, which I think I could identify. Further than that I could recognize, I think.

The vault in which they were deposited was broken open and robbed. The next morning after the robbery, I destroyed about fifteen thousand dollars of said bills which were mutilated. This robbery took place on the night of the 19th April, 1870—on Saturday night.

161 I have never been able to recover any of these stolen bills, but I hear of them floating about the country. At the time of the robbery or thereabouts the circulation was I cannot say how much. In Nov., 1869, when I took the books, the circulation was ($142.500,) one hundred & forty-two thousand five hundred dollars. I afterwards redeemed the seventy-one thousand dollars. At the time of the robbery the books showed about seventy thousand out. This amt. was subject to a deduction of whatever amt. might have been destroyed while in circulation. I cannot say when the bank ceased issuing its bills. I cannot say positively whether the bank issued bills after Jan'y, 1862, or not.

(Mr. Rion puts in evidence, by consent, the paper marked "Exhibit A.") This is a true copy of the originals. To my personal knowledge, all the recitals of facts therein stated are true. I did give the notice to the creditors of the bank as required by Judge Boozer.

By Mr. Stone:

The books show that on Nov. 19th, 1864, there was outstanding $367,000.

I had certificate from cashier of bank, signed by committee of directors, that bills to amount of two hundred & twenty-five thousand three hundred & forty dollars were burned by order of board of directors. This, with the bills, were stolen. I have a memorandum to same effect
from Mr. Scott, as to the outstanding circulation when I assumed
162 the office of receiver of the bank. None of the books of the bank
which I have show these figures.

Mr. J. P. SOUTHERN was next sworn and examined for the defence by Mr. Rion.

I was director in the Exchange Bank for some time before the commencement of the war, and up to the close of the bank's operations. Mr. Rufus Johnson was president of the bank from about the time that I was elected director continually until the time of his death, about two years after the war. Mr. Lyles was cashier when Mr. Johnson was elected president, and so remained until about the beginning of the war, when Mr. Laughlin was elected. He was succeeded by Mr. Henry E. Scott in the summer of 1865, and so continued until the bank went into hands of the receiver. Mr. Lyles died in 1865. I think Mr. Laughlin is in New York. I was well informed as to the affairs of the bank. We ceased

issuing the bank-notes when the first confederate notes were issued, in 1861 or 1862. None of the bank-bills were issued after that time. After that time, as the bills were received, they were retained, and from time to time were burned. The bills were burnt by a committee of the board of directors, who first verified them and then made an entry in
163 the bank-books. I do not recollect how many bills were burned;
I know that there was over a million of dollars' worth of these bills burned. I do not know, without reference to the bank-books, how many bills were outstanding. About two or three years ago there were very few of the bills to be found in any of the markets of the United States. The bank did a prosperous business as long as I knew of it. The bank paid specie until its suspension was legalized by act of legislature. The bank was able to meet all of its liabilities undoubtedly up to Feb'y, 1865. I have no doubt whatever that the bank at that day could meet the whole of its liabilities.

Cross-examined by Mr. Stone:

I cannot tell what amount of confederate money, stock, or bonds the bank held in Dec., 1862. The bank did subscribe to the confederate stocks & securities. The bank did not invest in confederate securities until late in the war, excepting $50,000, fifty thousand dollars, in the $15,000,000 loan, and that was all paid out as dividends to the stockholders. We did business during the war in confederate currency. This first amount of $50,000 was taken in 1861 or 1862, when the confederate congress was sitting in Montgomery. When I say that the bank could meet al' its liabilities, I mean that they could do so in the currency
164 then in circulation here, being the confederate currency with
which they operated. I could not fix the time up to which the bank could have met its liabilities in specie. It could do so up to time when confederate currency was in general use. Cannot tell whether the debts of the bank could have been fully met by payments in specie or its equivalent on 1 Jan'y, 1863. I know of no books or records by which I could determine the assets or liabilities of the bank on 1 Jan'y, 1863. The bank was removed from Columbia in Feb'y, 1865. It never resumed business as a bank of issue or discount after Feb'y, 1865, except in winding up its affairs. The confederate securities owned by the bank were large in amount, and I am sure they were not bought until the year 1864, some few may have been bought in 1863, but the greater part was bought in 1864. Dividends were paid regularly, and I think the last was paid in January, 1865, just before leaving here. Dividends were paid in confederate currency.

Redirect by Mr. Rion:

A portion of the liabilities due on Feb'y, 1865, were deposits which, by special agreement, were to be redeemed in confederate currency. I know of no other liabilities than those for the bills themselves, which were not based on transactions in confederate money. If all the liabil-
165 ities of the bank which could have been redeemed in confederate
currency had been redeemed in Feb'y, 1865, the bank would have had sufficient assets to have redeemed its currency, its bills, in gold or its equivalent. I mean provided they had collected all the assets then good. If the bank had been put in liquidation on 1st Feb'y, 1865, it could have met all its liabilities and redeemed its outstanding bills in specie or its equivalent. The failure of assets was due to the disasters of the war.

J. P. SOUTHERN.

Sworn to before me this 11th March, 1873.

JOHN F. FICKEN, *Referee.*

Mr HENRY E. SCOTT was next examined on behalf of the plaintiff by Mr. Stone.

I have examined the bills which the plaintiffs present and in their complaint allege that they held. They amount to five thousand three hundred and forty five, and are genuine in my opinion.

Cross-examined by Mr. Rion:

I had charge of the books, of the bank until I turned them over to the receiver. I furnished Mr. Baldwin a statement of the amount of outstanding bills in Feb'y, 1865, and also of the bills which have been
166 taken in since then and up to app't of receiver. As cashier I redeemed some bills and received others in payment of debts due the bank.

(Plffs. here admits that Mr. Scott corroberates the evidence given by Mr. Baldwin as to the circulation and destruction of notes by the bank; that is, Nov. 19th, 1864, circulation was $367,887.50.)

Burned by directors of the bank not far from $225,340. I was an officer in the Commercial Bank in 1861, and I have no doubt but that confederate money was in circulation in winter of 1861–1862.

HENRY E. SCOTT.

Sworn to this 11th March, '73.

JOHN F. FICKEN, *Referee.*

Col. L. D. CHILDS being duly sworn was examined on behalf of the defence by Mr. Rion.

I am now president of the Carolina Nat'l Bank of Columbia. I was a director in the Exchange Bank of Columbia from April, 1863, until the bank was turned over to a receiver. I think that confederate currency was first issued in 1861. On the 1st Feb'y, 1865, I, as a director,
167 regarded the Exchange Bank as decidedly solvent. If put in liquidation on 1st Feb'y, 1865, it would have met all its liabilities. We passed a resolution requiring all depositors to sign an agreement that all deposits were to be paid in confederate currency. If all the liabilities which were solvable in confederate currency had been paid in confederate currency, the balance of debts could have been paid in specie or its equivalent. I was one of the committee appointed by the president of the bank about 1st Jan'y, 1865, sooner or later, to examine the financial condition of the bank, and the committee was satisfied that the bank could then meet all its liabilities, redeem its currency in specie or its equivalent, and have a surplus left for the stockholders.

Cross-examined by Mr. Stone:

I do not recollect the bank declaring a dividend after I became a director, in 1863, but the book will show. I was not aware that the bank had purchased any confederate securities except the loan of 1864 of $400,000, which was made in confederate currency. I think Rufus Johnson, the then president of the bank, owned stock. He was a resident of this State. His widow now lives in Charlotte. I think Col. William Johnson, who lives in Charlotte, was also a stockholder; I think, in 1863. I am pretty certain that the bank was solvent in Feb'y, 1865.

168 Cross-examined by Mr. Rion:

Dividends might have been declared by the bank & I might not have known.

By Mr. Stone:

Charles J. Bolin was elected a director after the war ended. He died insolvent.

L. D. CHILDS.

Sworn to this 11th March, 1873.

JNO. F. FICKEN, *Referee.*

Exhibit A in evidence.

COLUMBIA, S. C., *Nov. 10th*, 1869.

Hon. J. L. NEAGLE,
Com'troller-General State S. C.

SIR: At a meeting of the board of directors of the Exchange Bank, held on the 9th inst., the following resolutions were adopted, to wit:

Resolved, That the president be directed to report to the comptroller-general that the Exchange Bank of Columbia will be unable to resume business on the 1st day of December next, as required by the act of the general assembly, and that the comptroller-general be requested to report this fact at once to the judge of the circuit court, with a view to the immediate appointment of a receiver.

169 Resolved, That the board of directors of the Exchange Bank of Columbia unite in requesting the appointment of C. H. Baldwin, esq., as receiver of said bank.

As president of the bank, it now becomes my duty to report to you this action of its board of directors, and in doing so I cordially solicit your aid and co-operation in carrying out the wishes of the board in placing the bank in immediate liquidation, as indicated by the foregoing resolutions.

I am, sir, very respectfully,
(Signed) J. P. SOUTHERN, *Pres'd't.*

STATE OF SOUTH CAROLINA,
Richland County:

THE STATE EX RELATIONE THE ATTORNEY-General
vs.
THE PRES'D'T & DIRECTORS OF THE Exchange Bank of Columbia, S. C.

It appearing by the official communication of J. P. Southern, esq., president of the Exchange Bank of Columbia, that the said bank, by resolutions adopted at a meeting of the directors thereof on the 9th inst., had announced its failure and inability to meet and comply with the requirements of an act of the general assembly passed March 13th, 170 1869, entitled "An act to enable the banks of the State to resume business or to place them in liquidation," a copy of which communication and resolutions is hereto appended, it is now, in accordance with the requirements of said act of the general assembly, and on motion of D. H. Chamberlain, attorney-general, ordered that the president of the said bank, J. P. Southern, esq., and the cashier of the said bank, Henry E. Scott, do forthwith turn over to C. H. Baldwin, esq., who is hereby appointed receiver of the said bank, all the property and assets of the said bank upon the receipt of a certified copy of this order and the certificate of the judge of this circuit that the said Baldwin has qualified in due form for his office as receiver. It is further ordered that C. H. Baldwin, esq., the receiver above named, do file with the clerk of the court of common pleas for Richland County his bond, with not less than two nor more than five sureties, in the sum of ten thousand dollars, conditioned for the faithful discharge of all his duties as receiver of said bank; the said bond and the sureties thereon to be approved by the judge of this circuit.

At chambers, Columbia, S. C., Nov. 24th, 1869.

(Signed) L. BOOZER,
Judge 5th Circuit.

171 STATE OF SOUTH CAROLINA,
Richland County:

THE STATE EX RELATIONE THE ATTORNEY-General
vs.
THE PRES'D'T & DIRECTORS OF THE Exchange Bank of Columbia.

On motion of D. H. Chamberlain, attorney-general, it is ordered that C. H. Baldwin, the receiver of the above-named bank, do forthwith give notice of his appointment as receiver of said bank, and that he require in said notice that all claims against said bank and all debts due the same be settled within sixty days from the date of said notice; said notice to be published daily for six successive weeks in the Charleston Republican and one newpaper in Baltimore and one in New York.

At Chambers, Columbia, S. C., Nov. 26th, 1869.

(Signed) L. BOOZER,
Judge 5th Circuit.

STATE OF SOUTH CAROLINA,
Richland County:

I, D. B. Miller, clerk of the court of common pleas for said county, do certify that the proceeding page contains a true copy of the order for publication in the case of the State ex relatione the Attorney-
172 General vs. the President and Directors of the Exchange Bank of Columbia, S. C.

In testimony whereof I have hereto set my hand and affixed my seal of office at Columbia this 26th day of November, A. D. 1869.

(Signed) D. B. MILLER, *C. C. P.* [L. S.]

Pursuant to the above order of the Hon. L. Boozer, judge of the 5th circuit S. C., appointing the undersigned receiver of the Exchange Bank of Columbia, notice is hereby given to all persons having claims against the said bank that they must be presented and proven within sixty days of the date of the said order at his office in Columbia, S. C.

Columbia, S. C., Nov. 26th, 1869.

(Signed) C. H. BALDWIN, *Receiver.*

COLUMBIA, S. C., *Nov. 28th*, 1869.

I hereby certify that C. H. Baldwin, the receiver within named, has filed his bond, & the said bond having been approved by me, he is now duly qualified to enter upon his duties as receiver of the Exchange Bank of Columbia.

(Signed) L. BOOZER,
Judge 5th Circuit.

173 And on the 8th day of October, A. D. 1873, came into court Jno. F. Ficken, special master ,and filed his report; which report is in words and of the tenor following:

Report.

THE UNITED STATES OF AMERICA,
South Carolina District, Fourth Circuit:

J. & T. GREEN, OF MISSISSIPPI,
vs.
CYRUS H. BALDWIN, RECEIVER OF THE EXCHANGE Bank of Columbia, J. P. Carroll, L. D. Childs, et al.
} In equity. Report of special master.

To the honorable the judges of the circuit court of the United States for the district of South Carolina:

Certain issues of fact having been made upon the pleadings in this case, I was, by an order of this honorable, court, "appointed special master to take the testimony and report the facts to this court."

I respectfully report, that the bill of complaint in this case was filed on the 18th June, 1872, by John Green and Thomas Green, citizens of the State of Mississippi, carrying on business as bankers under the firm-name of J. & T. Green, against Cyrus H. Baldwin, receiver
174 of the Exchange Bank of Columbia, J. P. Carroll, L. D. Childs, citizens of the State of South Carolina, et al; that the said bill of complaint was filed by the plaintiffs in behalf of themselves and of all other holders of bank-bills issued by the said Exchange Bank of Columbia, and still unpaid, who shall come in and contribute to the expense of this suit.

Upon motion of the solicitors of the plaintiffs, and after due notice to the defendants' solicitors, a reference in this case was held at Columbia, So. Ca., on the 11th March, 1873, the testimony taken at this reference being herewith filed. As the result of my conclusions, I respectfully report that the said Exchange Bank of Columbia was incorporated by an act of the general assembly of the State of South Carolina passed on the 16th December, A. D. 1852, and that by the terms of this act each share-holder who should own stock in said bank at the date of its failure, or at any time within twelve months previous to such failure, shall be liable and held bound for the debts of said bank to the extent of double the amount of his or her interest in said stock.

From the character of the testimony submitted, I conclude that the Exchange Bank of Columbia is now insolvent, and that it became
175 insolvent some time during the month of February, A. D. 1865.

The force of the testimony goes to show that as late as the month of January, A. D. 1865, the bank could have met such of its obligations as were payable in confederate currency in full in that currency, and that it could have redeemed all of its remaining liabilities in specie or its equivalent. The burning of the city of Columbia, where said bank was located, occurred in February, 1865, about which time the bank suspended its business, which was never afterwards resumed. Hence we can safely fix the month of February, 1865, as the date of the failure of said Exchange Bank of Columbia, and I so report.

By an order of the circuit court for Richland County, in the State of South Carolina, issued by the honorable L. Boozer, judge of the fifth circuit, on the 24th day of November, A. D. 1869, the defendant Cyrus H. Baldwin was appointed receiver of the Exchange Bank of Columbia, and from that day up to the present time has continuously acted as such receiver.

The said receiver in his testimony reports the entire amount of the assets of said bank which are good as being worth in all the sum of
nineteen hundred and ten $\frac{29}{100}$ dollars, ($1,910.29,) and that in ad-
176 dition thereto there remain of assets which he pronounces wholly
worthless the following, to wit: Six thousand dollars in bonds of the State of North Carolina, issued during the late war; five thousand eight hundred dollars in bonds of the State of South Carolina, issued also during the late war; three hundred and eight thousand seven hundred and seventy-two dollars in securities of the Confederate States, and one hundred and fourteen thousand two hundred and five $\frac{57}{100}$ dollars in notes of *of* various individuals. These assets, good and bad, are now in the hands of the receiver, and as the good assets amount only to the sum of nineteen hundred and ten $\frac{29}{100}$ dollars, ($1,910.29,) they are wholly insufficient to meet the claim of the plaintiffs.

I further report that the plaintiffs produced at the reference aforesaid the bills of the said Exchange Bank of Columbia which are the subject of the present suit. These bills are of various denominations, and the sum total of their face values amounts to five thousand three hundred and forty-five dollars, ($5,345.) The bills were examined by Mr. Henry E. Scott, the former cashier of the bank, who pronounced them genuine.
I therefore report this amount as being fully established as a
177 valid claim against said bank, so far as the genuineness of the
bills is concerned. The plaintiffs, in their testimony taken by commission, declare that the entire amount of these bills were obtained for value; that none of them were taken at a cost less than their respective face values, excepting some twenty or thirty dollars which were purchased by them in their banking-house at a figure which they cannot now remember, and that all of said bills were owned by them prior to January 1st, A. D. 1870.

No book containing the names of the stockholders of said bank is in the possession of the receiver or of any one of the witnesses who testified. One witness thinks that William Johnson was a stockholder in 1863, but knows not to what extent. It was also stated that Rufus Johnson at one time owned stock. The majority of the defendants in their answers admit owning stock in said bank as follows:

Thomas J. Robertson, that in May, 1862, he owned one hundred shares in the stock of the Exchange Bank of Columbia, at which time he sold the entire amount, and that since then he purchased none.

James P. Carroll admits that on the first of December, A. D. 1862, he owned two hundred shares of said stock, and that at a later day he
acquired one hundred and sixty additional shares, all of which he
178 owned up to 22d December, A. D. 1869.

Maximilian La Borde admits that on December 1st, 1862, he owned four hundred and nineteen shares of said stock and retained the same up to 22d December, 1869.

L. D. Childs admits acquiring in 1863 two hundred shares.

Charles Logan admits owning on 1st December, 1862, and retaining up to 22d December, 1869, fifty shares of said stock.

J. P. Southern admits owning on 1st December, 1862, sixty or eighty shares; that he afterwards acquired more; that on 14th April, 1863, he sold two hundred and eighty shares, leaving him in the ownership of only some twenty or twenty-five shares of said stock.

Arthur W. Kennedy admits owning on 1st December, 1862, one hundred shares, none of which did he transfer afterwards.

William Wallace, executor of the last will and testament of Andrew Wallace, admits that his testator, on the 1st December, 1862, owned four hundred shares, but acquired no others.

William Martin, executor of the last will and testament of Edward J. Arthur, admits that his testator, on 1st December, 1862, owned one hundred shares, but acquired no others.

William M. McGuinness admits that on 1st December, 1862, he
179 owned eleven shares; that on the 3d February, 1864, he transferred the same to Dennis McGuinness, as trustee for his then wife.

William B. Stanley admits owning on 1st December, 1862, thirty-five shares of said stock, all of which he retained up to 22d December, 1869.

A. B. Springs admits owning on 1st December, 1862, and retaining up to 22d December, 1869, two hundred shares.

Lewis Levy admits owning on 1st December, 1862, and retaining up to 22d December, 1869, two hundred and forty-three shares.

P. W. Chicks admits owning on 1st May, 1862, two hundred shares of said stock, on which date he sold the entire amount.

Cyrus H. Baldwin admits that in 1863 he acquired sixty-five shares.

It is also in testimony that on the 19th November, 1864, there were in circulation of the bills of this bank three hundred and sixty-seven thousand eight hundred and eighty-seven $\frac{50}{100}$ dollars, ($367,887.50;) that in November, 1869, when the receiver took possession of the assets and books of said bank, that there were of its bills one hundred and forty-two thousand five hundred dollars, ($142,500.00;) that the receiver afterwards redeemed of said bills some seventy-one thousand dollars,
($71,000.00); that the seventy-one thousand dollars in redeemed
180 bank-bills were deposited in the vault of Scott, Williams & Co.,
bankers, in Columbia, So. Ca., which, on the night of Saturday, the 19th April, 1870, was broken into and robbed of most of its contents, embracing the said amount of bank-bills which had been redeemed, less some fifteen thousand dollars of the same which had been mutilated.

There has been no testimony adduced connecting the bills held by the plaintiffs and now being sued upon with any of these stolen bills, but, on the contrary, the plaintiffs testify that all of their bills were owned by them prior to January 1st, 1870.

By the request and with the consent of counsel as to the correctness of the date, I report that confederate currency was generally in circulation as early as January 1st, 1862.

I also report that suit for the recovery of the face value of plaintiffs' bills aforesaid was commenced on 18th June, 1872.

Charleston, S. C., 2d Oct'r, 1873.

Respectfully submitted.

JOHN F. FICKEN,
Special Master.

Supplemental.

Upon filing the foregoing report, I discovered that the defendant John H. Kinard had filed his answer since the record was
181 placed in my hands. I would now further report that the said John H. Kinard admits in his said answer that on the 1st December, 1862, he owned about twenty-five shares in said Exchange Bank of Columbia, all of which he retained up to 22d December, 1869.

October 3d, 1873.

Resp'y submitted.

JNO. F. FICKEN,
Special Master.

Testimony to accompany suppl. report.

J. & T. GREEN
vs.
C. H. BALDWIN, RECEIVER.

Reference called this 18th April, 1873, by Messrs. Corbin and Stone, with a view of proving additional claims. No notification having been given to the other counsel in the case, Mr. Wm. Stone was alone present as counsel.

Mr. HARVEY TERRY, being duly sworn, says: I have been many years engaged in the banking business, but am not now. I am familiar with bank-bills; was familiar with bills of Exchange Bank of Columbia while engaged in the banking business. Large amounts of them passed thro' my hands.

(Three hundred and fifty dollars in bills of the Exchange Bank of Columbia were put in evidence by Mr. Stone as property of witness.)

182 In the package there are fourteen bills on said bank of the denomination of five dollars each, ranging in date from 1853 to 1854. Also twenty-two bills of ten dollars each, dates ranging 1853 & 1854; three bills of twenty dollars each, dates ranging, one in 1853, one in 1854, one 1859. I have examined these bills carefully, and, from their appearance and the plate, I pronounce them genuine.

Second package of said bills, belonging to Archibald P. Boggs, of Augusta, Ga., to use of Harvey Terry, containing eight hundred and sixty-six fives, dated in years 1853, 1854, and 1855; one hundred and three bills of ten dollars each, dated in 1853 and 1854; five twenty-dollar bills, dated in years 1853 & 1854; five fifty-dollar bills, three dated before 1855, two dated in 1860; one one-hundred dollar bill, dated before 1855, making in all five thousand eight hundred and ten dollars.

Package No. 3. Bills of Joseph S. Wright, of Philadelphia, Penn., to use of Harvey Terry, containing one bundle of six hundred and seventy-six bills of five dollars each, dated principally in 1853 & 1854, but all dated previous to 1860. Another bundle of six hundred and ninety-eight ten-dollar bills, dated in 1853 & 1854, principally, but all before 1860. Another bundle of one hundred and four twenty-dollar
183 bills, dated principally 1853, but all before 1860. Another bundle of six bills of fifty dollars each, five dated 1853–1854, and one Jan'y, 1860. One bundle of ten one hundred-dollar bills, seven dated in 1853, and three dated Jan'y, 1860.

Witness further testifies: I saw Mr. Joseph S. Wright buy the bills last

above named as being in package No. 3. They were bought from J. J. Nicholson & Sons, of Baltimore, a respectable house doing a large banking business. The bills were bought in the summer of eighteen hundred and seventy-two; the consideration was good money, a large amount, but less than the face-value of said bills. Before the sale of the bills *to* Wright, Nicholson & Sons stated that they were obtained in their regular business, in due course of trade as bankers. I enquired at the time particularly as to whether there was any suspicion or taint on said bills, or that they were any part of the bills stolen from said bank. Said Nicholson declared in the strongest manner that said bills came to them legitimately and without any notice that any of said bills had been stolen. They further said that, as they had been taken in different small amounts over their counter, it was impossible that they could be any portion of the stolen bills. I advised Mr. Wright to purchase their bills,
and I never would have done so unless I believed them to
184 be bills which had not been stolen.

I have carefully examined all of the bills which have been presented at this reference, and from their appearance and the plate I pronounce them to be genuine.

The bills owned by me individually, amounting to three hundred and fifty dollars, I bought from sundry different persons, in small amounts from five dollars upwards. I bought all of them since the year 1870, but do not recollect the exact date of purchases, as I kept no account of the same. I bought always from respectable persons, bankers, and brokers. Forty dollars of the same I bought from the cashier of the savings-bank at Montgomery, Alabama. I never had any notice that any of said bills were stolen or tainted in any way, and I made particular enquiry on this point.

HARVEY TERRY.

Sworn to before me this 18th April, 1873.

JOHN F. FICKEN,
Special Master.

And on the 29th day of October, A. D. 1873, came into court John F. Ficken, special master, and filed the following supplemental report; which report is in words and of the tenor fol-
185 lowing:

Supplemental report of special master.

THE UNITED STATES OF AMERICA,
South Carolina District:

Fourth circuit. In equity.

J. & T. GREEN, OF MISSISSIPPI,
vs.
C. H. BALDWIN, RECEIVER OF THE EXCHANGE Bank of Columbia, et al.
} Suplemental report No. 2 of special master.

To the honorable the judges of the circuit court of the United States for the district of South Carolina:

I beg leave to report that I held on the 18th April, 1873, a special reference in this case at my office in Charleston, So. Caro., at the request of Messrs. Corbin & Stone, attorneys for the plaintiffs, who desired to put in additional claims against the defendants. I received less than twenty-four hours' notice of the proposed reference, which was arranged to take the proof of a witness who could not remain over, and as the counsel for defendant could not possibly reach Charleston in time upon

any notice which I might have extended, I determined to
186 hold the reference subject to any objection from defendants' attorneys.

I respectfully report that at said reference Mr. Harvey Terry put in a claim against the defendants for three hundred and fifty dollars in bills of the Exchange Bank of Columbia, and deposited that amount of said bills in my hands as special master. He testified that they were all purchased by him since the year 1870, and from respectable brokers and bankers, and that in his opinion they are all genuine issues of the bank.

Mr. Terry also produced and deposited with me a second lot of the bills of said bank, amounting to the sum of five thousand eight hundred and ten dollars, which he states are the property of Archibald P. Boggs, of Augusta, Geo., who holds the same to the use of Harvey Terry.

Mr. Terry further produced a third package, said to contain thirteen thousand seven hundred and forty dollars in bills of said bank. This package was also deposited with me, and is put in as the property of Joseph S. Wright, of Philadelphia, Penn., to the use of Harvey Terry. Mr. Terry stated further that he was present when Joseph S. Wright purchased the lot of bills last named from J. J. Nicholson & Sons, in
Baltimore, Md., in the summer of 1872; that special inquiry
187 was made of said firm as to the possibility of *of* said bills being
a portion of those stolen from the custody of the receiver of the said Exchange Bank; that, in reply, said firm assured Mr. Wright that it was impossible for such to be the case, inasmuch as these bills were all purchased by them at their banking-office in various different small amounts.

I am not prepared to report upon the genuineness of these bills so as aforesaid deposited with me, nor would I be justified in so doing in view of the absence of defendants' counsel from the reference aforesaid. I therefore beg leave to report to this honorable court the fact that the three several lots of bank-bills aforesaid were deposited with me as special master in the names of the persons above stated, and that this entitles them to be regarded as parties to these proceedings.

29th October, 1873.

Respectfully submitted. JOHN F. FICKEN,
Special Master.

And on the 29th day of October, A. D. 1873, came into court, James H. Rion, solicitor for defendants, and filed the following exceptions to report of special master; which exceptions are in words and of the tenor following:

Exceptions to report of special master.

188 UNITED STATES OF AMERICA,
South Carolina District, Fourth Circuit:

J. & T. GREEN, OF MISSISSIPPI,
against
CYRUS H. BALDWIN, RECEIVER OF THE Exchange Bank of Columbia, J. P. Carroll, L. D. Childs, et al.
} In equity.

Exceptions taken by the defendants in the above-entitled cause to the report of John F. Ficken, esquire, special master, made in this cause and bearing date the 2d day of October, A. D. 1873.

FIRST EXCEPTION.—That the said master has stated in his report

that the said Exchange Bank of Columbia was incorporated by an act of the general assembly of the State of South Carolina passed on the 16th December, A. D. 1852, and that by the terms of this act each share-holder who should own stock in said bank at the date of its failure, or at any time within twelve months previous to such failure, shall be liable and held bound for the debts of said bank to the extent of double the amount of his or her interest in said stock; whereas
189 no such provisions is contained in the said act of incorporation.

SECOND EXCEPTION.—That the said special master did not report the facts relating to proceedings had in the circuit court for Richland County, State of South Carolina, in 1870, whereby, on surrender of charter by the bank, all creditors thereof were called in to prove their demands, and a receiver appointed; all which were duly in proof.

In which particulars the defendants except to the report of the special master, and appeal therefrom to the honorable court this 27th day of October, A. D. 1873.

JAS. H. RION,
Solr. for Jas. P. Carroll and other Defendants.

After argument by the counsel for plaintiffs and defendants, the exceptions taken by Jas. H. Rion, defendants' counsel, were allowed by the court.

And on the 9th day of February, A. D. 1874, came into court Jas. H. Rion, solicitor for defendants, and filed the following suggestion; which suggestion is in words and of the tenor following:

Suggestion.

190 UNITED STATES OF AMERICA,
South Carolina District:

In equity. In the circuit court, fourth circuit.

J. & T. GREEN, OF MISSISSIPPI,
against
CYRUS H. BALDWIN, RECEIVER OF THE Exchange Bank of Columbia, J. P. Carroll, L. D. Childs, et als.
} Bill of complaint.

And the defendants, W. B. Stanley, William Wallace, executor, A. W. Kennedy, William Martin, as executor, Charles Logan, J. P. Southern, A. B. Springs, William M. McGuinness, J. H. Kinard, Lewis Levy, Thomas J. Robertson, J. P. Carroll, Elizabeth L. Herndon, as administratrix, and Catherine Macfie, come into court here and suggest to this honorable court that since the last continuance of this cause, to wit, upon the first day of January, in the year of our Lord one thousand eight hundred and seventy-four, the charter of the said Exchange Bank expired and became extinct by its own limitation, as appears by the act of incorporation set forth in paragraph I of complainants' bill,
191 and that thereby and by law all liability on the part of the said defendants ceased and became extinct.

JAS. H. RION,
Defendants' Solicitor.

And on the 18th day of February, A. D. 1874, came into court Corbin & Stone, complainants' solicitors, and filed the following demurrer to suggestion; which demurrer is in words and of the tenor following:

Demurrer to suggestion.

THE UNITED STATES OF AMERICA,
District of South Carolina, 4th Circuit:

J. & T. GREEN, OF MISSISSIPPI,
against
CYRUS H. BALDWIN, RECEIVER OF THE Exchange Bank of Columbia, J. P. Carroll, L. D. Childs, et al.
} In equity.

The said complainants, to the suggestion of the defendants W. B. Stanley; William Wallace, executor; A. W. Kennedy, William Martin, as executor; Charles Logan, J. P. Carroll, J. P. Southern, A. B. Springs, William McGuinness, J. H. Kinard, Lewis Levy, Thomas J. Robertson; Elizabeth Herndon, as administratrix, and Catherine Macfie, filed
192 herein on the 9th day of February, 1874, wherein they say that since the last continuance of this cause, to wit, on the first day of January, 1874, the charter of the said Exchange Bank expired and became extinct by its own limitation, as appears by the act of incorporation, set forth in paragraph I of complainants' bill, and that thereby and by law all liability on the part of the said defendants ceased and became extinct, do demur, and for cause of demurrer do show that by the charter of the said bank and the law of the State of South Carolina the liability of the said defendants did not cease and become extinct on the first day of January, 1874, when the charter of the said Exchange Bank expired by its own limitation.

And these complainants humbly pray the judgment of said court as to the said suggestion.

CORBIN & STONE,
Complainants' Solicitors.

And on the 16th day of April, A. D. 1874, came into court the said W. Alston Pringle and Charles Alston, executors, by W. Alston Pringle, their solicitor, and obtained the following order; which order is in words and of the tenor following:

Order.

193 UNITED STATES OF AMERICA,
Fourth Circuit, South Carolina District:

J. & T. GREEN
vs.
C. H. BALDWIN, RECEIVER OF THE EXCHANGE Bank of Columbia, et al.
} In equity.

It not appearing by the report of J. F. Ficken, esq., referee in this case, that the late Arthur P. Hayne was a stockholder in the Exchange Bank of Columbia, and the fact being denied by the answer of W. Alston Pringle and Charles Alston, executors of Arthur P. Hayne, on motion of W. Alston Pringle, solicitor of the said W. Alston Pringle, and Charles Alston, executors aforesaid, ordered that the bill be dismissed as against the said W. Alston Pringle and Charles Alston, executors of Arthur P. Hayne, and that the plaintiffs do pay their costs.

16th April, 1874.

HUGH L. BOND,
Ct. Judge.

And on the 16th day of April, A. D. 1874, came into court J. E. Hagood, clerk, and filed his report, showing the amount of bills proved before him by order of court; which report is in words and of the tenor following:

194 *Report of J. E. Hagood, clerk.*

UNITED STATES OF AMERICA,
District of South Carolina:

In circuit court.

J. & T. GREEN
vs.
CYRUS H. BALDWIN, RECEIVER OF THE Exchange Bank of Columbia, South Carolina, J. P. Carroll, L. D. Childs, et al.
} In equity.

To the honorable the judges of the circuit court, fourth circuit, district of South Carolina:

Pursuant to an order of this court of the 10th of June, 1873, in this case, whereby it was ordered that all persons having any claims against the Exchange Bank of Columbia, South Carolina, on account of bills issued and circulated by said bank, and who desire to enforce their said claims in this cause, were required to appear and prove and file their said claims in this cause on or before the first day of October next.

That I caused notices to be published in the Greenville Republican, a newspaper published in the city of Greenville, and the Union 195 Herald, a newspaper published in the city of Columbia, for six successive weeks, in accordance with said order; the Greenville Republican, commencing on the first day of July, 1873, and ending on the fifth day of August, 1873, and the Union Herald, commencing on the 23d day of June, 1873, and ending on the day of , 1873, requiring all bill-holders of said bank to prove and file the same in this court.

I respectfully report that on the 18th day of September, 1873, W. E. Holcomb proved and filed before me bills of the said bank amounting to		$60 00
L. D. Childs proved and filed on the 8th day of September, 1873, bills amounting to		$3,200 00
H. W. Kennedy proved and filed on the 8th day of September, 1873, bills amounting to		$3,000 00
William McGuinness proved on the 8th day of September, 1873, bills amounting to		$2,995 00
W. W. Wilson proved and filed on the 22d day of September, 1873, bills amounting to		$1,245 00
For G. P. Curry:		
Harvey Terry proved & filed on 30th day of September, 1873, bills amounting		$885 00
Certificates amounting to	$3,317 50	

Joseph Daniel Pope proved and filed on the 30th day of September, 1873, bills amounting to	$3,000 00
196 C. Volger proved and filed on the 30th day of September, 1873, bills amounting to	$135 00
Charles Logan proved and filed on the 30th day of September, 1873, bills amounting to	$1,365 00
Orlanzo Z. Bates proved and filed on the 30th day of September, 1873, bills amounting to	$40 00
J. E. Hagood proved and filed on the 30th day of September, 1873, bills amounting	$55 00
Bills filed at this date	$15,980 00
Certificates	3,317 50
	$19,297 50

I beg leave further to report that on the 4 & 6th days of December inst., by order of this court, J. P. Carroll, L. D. Child, Joseph Crews, and E. R. Stokes, also by orders since the above date, the Bank of Charlotte, North Carolina, Calvin J. Cowles, Branch, Sons & Co., were allowed to come in, and file and prove their bills of the Exchange Bank of Columbia, S. C.; & on the 4th day of December, 1873—

J. P. Carroll proved & filed bills amounting to	$3,000 00
J. P. Southern on same day proved & filed bills amounting to	$3,000 00
197 Joseph Crews on the 6th day of December proved and filed bills amounting to	$1,460 00
E. R. Stokes, on 6th day of December, proved and filed bills amounting to	$120 00
Bank of Charlotte, on 10th day of March, 1874, proved & filed bills amounting to	$200 00
Calvin J. Cowles, on 26th Dec., 1873, proved & filed bills amounting to	$285 00
Branch, Sons & Co. proved & filed bills amounting to	465 00
Total amount bills filed	$8,530 00
Amount bro't forward, bills filed	15,980 00
Certificates	3,317 50
	$27,827 50

All of which is respectfully submitted.

J. E. HAGOOD,
Special Referee.

Statement of facts filed upon the trial of the cause.

THE UNITED STATES OF AMERICA,
District of South Carolina, Fourth Circuit:

J. & T. GREEN
vs.
CYRUS H. BALDWIN, RECEIVER OF THE EXchange Bank of Columbia, et al. } In equity.

198 This is a bill of complaint, filed on the 18th day of June, 1873, by the plaintiffs, in behalf of themselves and all other holders of

bank-bills issued by the Exchange Bank of Columbia, against the defendant Baldwin as receiver of said bank, and certain other defendants, holders of shares of capital stock of said bank. The bill of complaint sets forth:

I. The incorporation of said bank on the 16th day of December, 1852, the amount of its capital stock, &c., and the endowment of said bank with the same rights and privileges, and the imposition upon it of the same duties, liabilities, obligations, regulations, and restrictions provided for the Planters and Mechanics' Bank of South Carolina, which was rechartered by the same act of December 16th, 1852. By the fourth section of the said act rechartering the said Planters and Mechanics' Bank it is provided that, in case of the failure of the said bank, each stockholder, copartnership, or body-politic having a share or shares in such bank at the time of such failure, or who shall have been interested therein at any time within twelve months previous to such failure, shall be liable and held bound, individually, for any sum not exceeding twice the amount of his, her, or their share or shares.

II. That the said Exchange Bank issued certain bank-notes
199 held by complainants, a schedule of which is annexed to the bill.

III. That demand for payment of said notes was duly made of said bank and refused.

IV. That by an act of Mar. 13, 1869, provision is made for enabling banks to resume business or place them in liquidation, and if banks are unable to resume, then for the appointment of a receiver.

V. The failure of said bank and the appointment of defendant Baldwin, as receiver, on the 22nd Dec., 1869, on application of the attorney-general of the State.

VI. The presentation, on the 26th day of March, 1872, and the 7th day of June, 1872, of $5,345 of the notes of said bank to the last president and cashier of said bank for redemption, which was refused.

VII. The failure of said bank on Dec. 1, 1862.

VIII. That in consequence of failure of bank the stockholders holding shares or who had been interested therein, on Dec. 1, 1862, and within twelve months previous thereto, became liable for the debts of said bank for sums not exceeding twice the amount of their stock.

IX. The number of shares held by the defendants.

X. That complainants were unable to ascertain the names of other holders of shares of stock in said bank, and that the books of the bank were not accessible to them, and that they prayed that if afterwards
names of other stockholders were discovered they might be made
200 parties defendant. The bill concludes with a prayer for judgment
against the stockholders, &c., and for relief.

To this bill several of the defendants have answered.

In their answers they admit the incorporation of the bank as alleged in the bill; the issue of notes by the bank, &c.

For pleas, the defendants say:

1. That the cause of action did not accrue within four years.

2. That action was not commenced within six months after the time the defendants became liable to the penalty imposed by said fourth section of said act of December 16th, 1852, if they are liable at all.

3rd. That by the 2nd section of said act of Dec. 16th, 1852, it is provided that the said Exchange Bank shall be subject to all the provisions of an act passed Dec. 18, 1840, entitled "An act to provide against the suspension of specie payment by the banks of this State;" and by the fifth section of said act of Dec. 16th, 1852, it is also provided that it

shall not be lawful for the said [Exchange] Bank, except in settlement with other banks, to pay or deliver in payment or satisfaction of any demand upon it or by way of loan or discount, any bill, note, check or other paper of any other bank; that the operation of said second
201 and fifth sections was suspended by an act of Dec. 21, 1857, and
continued to be suspended by other subsequent acts until the said Exchange Bank became insolvent and failed, whereby, whatever liability may have been imposed upon the defendants, if any liability was so imposed by the 4th section of the act of Dec. 16, 1852, became and was in law, removed and annulled.

4th. That the assets of said Exchange Bank had not been exhausted nor has their value been ascertained.

5th. That liabilities of said bank have not been ascertained.

6th. That the aforesaid act of March 13, 1869, in no manner provided for the continuation of the liability of stockholders of said bank after the forfeiture of its corporate rights and privileges.

7th. That the complainants, as defendants allege, obtained the notes of said bank long after they had ceased to be redeemable for gold or silver, or to be current as money, for a price far below their par value, &c., and they are not entitled to recover more than they actually paid for said bills, with proper interest, &c.

8th. That complainants have obtained no judgment upon said bills.

Besides these several pleas certain of the defendants have in
202 their answers, by way of plea, said:

9th. That said Exchange Bank issued a large amount of its bills after it had failed and become insolvent, for which issue no individual or personal liability attaches to the shareholders in said bank, and that complainants should prove that their bills are not any of those so illegally issued.

10th. That complainants have not alleged that they held their bills at the time defendants sold their stock nor at any time within twelve months subsequent thereto.

11th. That complainants have not alleged want of knowledge of the failure or insolvency of said bank when they became holders of the said bills.

12th. That complainants have not alleged that they held said bank-bills at the time they pretend the said bank failed.

And by way of answer the defendants further say that previous to the 16th day of April, 1870, a large amount of bills of said bank had been redeemed and were deposited for safe-keeping with Messrs. Scott, Williams & Co., of Columbia, and that on the night of the 16th of April, 1870, the vault of said Messrs. Scott, Williams and Co., was broken open, and said redeemed bills were stolen therefrom, wherefore they demand
203 strict proof that the bills of complainants were not a part of said
stolen bills.

To these several answers replications were filed, and the several questions of law raised in the pleadings and herein set forth are now at issue. The questions of fact were referred to John F. Ficken, esq., as special master, who filed his report thereon on the 3rd day of October, 1873.

The questions of law are before the court for adjudication.

In addition to the issues thus presented, certain of the defendants filed, on the 9th day of February, 1874, a suggestion to the effect that on the 1st day of January, 1874, the charter of said Exchange Bank expired by its own limitation, and that thereby and by law all liability on the part of the said defendant ceased and became extinct.

The above is a correct statement of the issues of law involved in the above-entitled cause.

CORBIN & STONE,
Complainants' Solicitor'.
JAS. H. RION,
Solicitor for many of the Defendants.

And at the April term, A. D. 1874, of the said court, the said parties come into court, by their solicitors aforesaid, and the cause was heard on the pleadings and reports, and thereupon, after argument by the
204 solicitors in the cause, the court rendered a decree in words and of the tenor following:

Decree.

UNITED STATES OF AMERICA,
District of South Carolina:

In the circuit court. In equity.

J. &. T. GREEN, OF MISSISSIPPI,
vs.
CYRUS H. BALDWIN, RECEIVER OF THE Exchange Bank of Columbia, J. P. Carroll, et al.

This cause came on to be heard on the pleadings and reports herein, and after hearing argument of Messrs. Corbin & Stone for complainants, and J. H. Rion, esq., for defendants, it is ordered, adjudged, and decreed that the persons who held shares of stock in the Exchange Bank of Columbia in the month of February, 1865, or who were interested therein within twelve months previous to said February, 1865, are liable and held bound, individually, to the complain'ts herein for the *a* sum not exceeding twice the amount of the share or shares held by said shareholders respectively.

It appears from the report of John F. Ficken, esquire, special
205 master, that at said date, (February, 1865,) or within twelve months previous to said date, the following persons held shares of stock of said bank, as follows:

James P. Carroll held two hundred (200) shares of stock of said bank;

Maxamilian Le Borde held four hundred and nineteen (419) shares of said stock;

Charles Logan held fifty (50) shares of said stock;

J. P. Southern held twenty (20) shares of said stock;

Arthur W. Kennedy held one hundred (100) shares of said stock;

William M. McGuinness held eleven (11) shares of said stock;

William B. Stanley held thirty-five (35) shares of said stock;

A. B. Springs held two hundred (200) shares of said stock;

Lewis Levy held two hundred and forty-three (243) shares of said stock;

John H. Kinard owned twenty-five (25) shares of said stock.

And that each of said persons is therefore liable to pay twice the amount of the face value (twenty-five dollars) of each share of stock held by him respectively, as follows, to wit:

James P. Carroll is liable to pay ten thousand (10,000) dol-
206 lars;

Maximilian La Borde is liable to pay twenty thousand nine hundred and fifty ($20,950) dollars;

Charles Logan is liable to pay two thousand five hundred (2,500) dollars;

J. P. Southern is liable to pay one thousand ($1,000) dollars;

Arthur W. Kennedy is liable to pay five thousand ($5,000) dollars;

William M. McGuinness is liable to pay five hundred and fifty ($550) dollars;

William B. Stanley is liable to pay seventeen hundred and fifty ($1,750) dollars;

A. B. Springs is liable to pay ten thousand ($10,000) dollars;

Lewis Levy is liable to pay twelve thousand one hundred and fifty ($12,150) dollars;

John H. Kinard is liable to pay twelve hundred and fifty ($1,250) dollars.

It is further ordered, adjudged, and decreed that the clerk do enter up judgment for complainants to the amount of their respective bills proven in this case as hereinafter stated. It appears from the reports of said J. F. Ficken, special master, and J. E. Hagood, esquire, clerk of this court, now before us, that the following persons hold and have proved bills of said bank in this case, as follows:

207 J. & T. Green, the complainants, to the amount of five thousand three hundred and forty-five ($5,345) dollars;

Harvey Terry to the amount of twelve hundred and thirty-five ($1,235) dollars in bills, and to the amount of three thousand three hundred and seventeen and $\frac{50}{100}$ ($3,317.50) in certificates or receipts of C. H. Baldwin, receiver of said bank;

Archibald P. Boggs, for the use of Harvey Terry, to the amount of five thousand eight hundred and ten ($5,810) dollars;

Joseph S. Wright, for the use of Harvey Terry, to the amount of thirteen thousand seven hundred and forty ($13,740) dollars;

W. E. Holcombe to the amount of sixty (60) dollars;

L. D. Childs to the amount of three thousand two hundred ($3,200) dollars;

William McGuinness to the amount of two thousand nine hundred and ninety-five ($2,995) dollars;

W. W. Wilson to the amount of twelve hundred and forty-five ($1,245) dollars, for G. P. Curry;

Joseph D. Pope to the amount of three thousand ($3,000) dollars;

C. Volger to the amount of three thousand one hundred and thirty-five ($3,135) dollars;

Charles Logan to the amount of thirteen hundred and sixty-five ($1,365) dollars;

208 Alonzo Z. Bates to the amount of forty ($40) dollars;

J. E. Hagood to the amount of fifty-five ($55) dollars;

J. P. Carroll to the amount of three thousand ($3,000) dollars;

J. P. Southern to the amount of three thousand ($3,000) dollars;

Joseph Crews to the amount of fourteen hundred and sixty ($1,460) dollars;

E. R. Stokes to the amount of one hundred and twenty ($120) dollars;

Bank of Charlotte, North Carolina, to the amount of two hundred ($200) dollars;

Calvin J. Cowles to the amount of two hundred and eighty-five ($285) dollars.

And it is ordered that the said bill-holders respectively have execution against said defendants, stockholders, above-named, for the said several amounts above stated and costs.

And it further appearing that the following-named defendants, to wit, Thomas J. Robertson, John W. Parker, F. W. McMaster, Andrew Crawford, John English, and C. D. Melton, executors of the estate of John Bryce, deceased, and Wade A. Lovick, and J. D. A. Kibler, administrators of the estate of Jesse Drafts, deceased, held no shares of
stock in said bank in the month of February, A. D. 1865, or
209 within twelve months previous thereto, it is ordered that as to
them the said bill be dismissed with costs.

It further is ordered that as to Cyrus H. Baldwin, as receiver of the Exchange Bank, said bill as to him as receiver be dismissed.

It further appearing, from the pleadings and report herein, that the following defendants owned shares of said bank, but it not appearing whether or not such shares were owned in February, 1865, at the time of the failure of said bank, or within twelve months previous thereto, it is ordered that it be referred back to said master to ascertain and report as to the ownership of shares of said bank in February, 1865, or within twelve months previous thereto, by said defendants, to wit:

James P. Carroll, as to one hundred and sixty shares.

L. D. Childs, as to one hundred shares.

William Wallace, as executor of estate of Andrew Wallace, as to ownership of four hundred shares, by his testator.

William Martin, as executor of estate of Edward J. Arthur, as to ownership of one hundred shares by said Arthur.

Cyrus H. Baldwin, as to ownership of sixty-five (65) shares.

Catherine McAfee, as to ownership of one hundred and eighty shares.

Elizabeth L. Herndon, administratrix de bonis non of the estate
210 of Zachariah P. Herndon, as to ownership of eight hundred and
fifty shares by said Zachariah P. Herndon.

And it is further ordered that the complainants have leave to move for such further order and decree, at the foot of this decree, as may be necessary to carry out the purposes thereof.

April 27th, 1874.

HUGH L. BOND,
Ct. Judge.

And on the 6th day of June, A. D. 1874, came into court Jas. H. Rion, solicitor for petitioners, and filed the following petition for appeal; which petition is in words and of the tenor following:

Petition for appeal.

UNITED STATES OF AMERICA,
South Carolina District:

In the circuit court.

To the honorable the judges of the circuit court of the United States for the fourth circuit, in and for the district of South Carolina:

The petition of James P. Carroll, A. Baxter Springs, William B. Stanley, Charles Logan, Arthur W. Kennedy, respectfully sheweth:

That lately, to wit, on the 27th day of April, A. D. 1874, in this
court, in the cause entitled "J. & T. Green of Mississippi against
211 Cyrus H. Baldwin, receiver of the Exchange Bank of Columbia,
J. P. Carroll, L. D. Childs et al., a decree was rendered against the defendant James P. Carroll for the sum of ten thousand dollars, and in his favor for the sum of three thousand dollars, leaving a balance

against him of the sum of seven thousand dollars; against the defendant A. Baxter Springs for the sum of ten thousand dollars; against the defendant William B. Stanley for the sum of one thousand seven hundred and fifty dollars; against the defendant Arthur W. Kennedy for the sum of five thousand dollars, and he has proven bills to the amount of three thousand and five dollars, for which he is entitled to a judgment in his favor; against the defendant Charles Logan for the sum of two thousand five hundred dollars, and in his favor for the sum of one thousand three hundred and sixty-five dollars, leaving a balance against him of the sum of one thousand one hundred and thirty-five dollars.

That the said James P. Carroll, A. Baxter Springs, William B. Stanley, Charles Logan, Arthur W. Kennedy, severally tender herewith their supersedeas-bonds, each with two good sureties; the bond of James P. Carroll, in the penal sum of fourteen thousand dollars; the bond
212 of A. Baxter Springs, in the penal sum of twenty thousand dollars; the bond of William B. Stanley, in the penal sum of three thousand five hundred dollars; the bond of Charles Logan, in the penal sum of two thousand two hundred and seventy dollars; the bond of Arthur W. Kennedy, in the penal sum of four thousand dollars; and each of said bonds conditioned for the prosecution by each of the several principal obligors of their appeal to effect, and their answering all damages and costs in case they fail to make their plea good.

That your petitioners desire to appeal to the Supreme Court of the United States from said decree.

Wherefore your petitioners pray that their appeal may be allowed, and their said several bonds be each approved.

And your petitioners will ever pray, and so forth.

JAS. H. RION,
Petitioners' Solicitor.

And on the 24th day of June, A. D. 1874, came into court the appellant, James P. Carroll, by Jas. H. Rion, his solicitor, and filed the following supersedeas-bond; which bond is in words and of the tenor following:

Supersedeas-bond of James P. Carroll.

213 UNITED STATES OF AMERICA,
State of South Carolina:

Know all men by these presents that we, James P. Carroll, William B. Stanley, and John Agnew, are held and firmly bound unto J. & T. Green, of Mississippi, in the full and just sum of fourteen thousand dollars, to be paid to the said J. & T. Green, their certain attorneys, executors, administrators, or obligors, to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents, sealed with our seals, and dated this 17th day of June, in the year of our Lord one thousand eight hundred and seventy-four.

Whereas, lately, at a circuit court of the United States for the fourth circuit in and for the district of South Carolina, in a suit pending in said court between J. & T. Green, complainants, and Cyrus H. Baldwin, as receiver of the Exchange Bank of Columbia, & others, defendants, a decree and judgment was rendered against the said defendants, and the said James P. Carroll and other defendants do take an appeal to the Supreme Court of the United States to *reserve* the decree and judgment in the aforesaid suit:

214 Now, the condition of the above obligation is such that if the said James P. Carroll and others shall prosecute their said appeal to effect and answer all damages & costs if they shall fail to make their plea good, then the above obligation to be void, or else to remain in full force and virtue.

J. P. CARROLL. [L. S.]
W. B. STANLEY. [L. S.]
JOHN AGNEW. [L. S.]

Signed, sealed, and delivered in presence of—
T. M. WIKES,
U. S. Commissioner for C. & D. Cts. of U. S. for So. Ca. Dist.

STATE OF SOUTH CAROLINA,
County of Richland:

William B. Stanley, one of the subscribers to the foregoing undertaking, being duly sworn, says that he is a resident & freeholder within this State, & is worth at least the sum of fifteen thousand dollars over all his debts & liabilities, & exclusive of property exempt by law from execution. WM. B. STANLEY.

Sworn to before me this 17th day of June, 1874.

T. M. WILKES,
U. S. Commissioner for C. & D. Cts. of U. S. for So. Ca. Dist.

215 STATE OF SOUTH CAROLINA,
County of Richland:

John Agnew, one of the subscribers to the foregoing undertaking, being duly sworn, says that he is a resident & freeholder within this State, & is worth at least the sum of fifteen thousand dollars over all his debts and liabilities, & exclusive of property exempt by law from execution.

JOHN AGNEW.

Sworn to before me this 17th June, 1874.

T. M. WILKES,
U. S. Commissioner for C. & D. Cts. of U. S. for So. Ca.

Approved:

GEO. S. BRYAN,
U. S. Judge, Dist. So. Ca.

6TH JULY, 1874.

And on the 24th day of June, A. D. 1874, came into court the appellant William B. Stanley, by Jas. H. Rion, his solicitor, and filed the following supersedeas-bond, which bond is in words and of the tenor following:

Supersedeas-bond of Wm. B. Stanley.

UNITED STATES OF AMERICA,
State of South Carolina:

Know all men by these presents that we, William B. Stanley,
216 George A. Shields, and Hardy Solomon, are held and firmly
bound unto J. & T. Green, of Mississippi, in the full and just sum of

three thousand and five hundred dollars, to be paid to the said J. & T. Green, their certain attorneys, executors, administrators, or assigns, to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents, sealed with our seals, and dated this third day of June, in the year of our Lord one thousand eight hundred and seventy-four.

Whereas, lately, at a circuit court of the United States for the fourth circuit in and for the district of South Carolina, in a suit pending in said court between J. & T. Green, complainants, and Cyrus H. Baldwin, as receiver of the Exchange Bank of Columbia, and others, defendants, a decree and judgment was rendered against the said defendants and the said William B. Stanley and others, defendants, do take an appeal to the Supreme Court of the United States to reverse the decree and judgment in the aforesaid suit:

Now, the condition of the above obligation is such, that if the said William B. Stanley and others shall prosecute their said appeal
217 to effect, and answer all damages and costs if they shall fail to
make their plea good, then the above obligation to be void, or else to remain in full force and virtue.

WM. B. STANLEY. [L. S.]
GEO. A. SHIELDS. [L. S.]
HARDY SOLOMON. [L. S.]

Signed, sealed, and delivered in presence of—
JAS. H. RION.

STATE OF SOUTH CAROLINA,
County of Richland:

George A. Shields, one of the subscribers to the foregoing undertaking, being duly sworn, says that he is a resident and freeholder within this State, and is worth at least the sum of five thousand dollars over all his debts and liabilities, and exclusive of property exempt by law from execution.

GEO. A. SHIELDS.

Sworn to before me this 17th day of June, 1874.
T. M. WILKES, [L. S.]
U. S. Commissioner for C. & D. Cts. of U. S. for So. Ca. Dist.

STATE OF SOUTH CAROLINA,
County of Richland:

Hardy Solomon, one of the subscribers to the foregoing undertaking, being duly sworn, says that he is a resident and freeholder within
218 this State, and is worth at least the sum of fifteen thousand dol-
lars over all his debts and liabilities, and exclusive of property exempt by law from execution.

HARDY SOLOMON.

Sworn to before me this 17th day of June 1874.
T. M. WILKES, [L. S.]
U. S. Commissioner for C. & D. Cts. of U. S. for So. Ca. Dist.

Approved:

GEO. S. BRYAN,
U. S. Judge, Dist. So. Ca.

6TH JULY, 1874.

And on the 24th day of June, A. D. 1874, came into court the appellant, Charles Logan, by James H. Rion, his solicitor, and filed the following supersedeas-bond; which bond is in words and of the tenor following:

Supersedeas-bond of Chas. Logan.

UNITED STATES OF AMERICA,
State of South Carolina:

Know all men by these presents that we, Charles Logan, James G. Graham, and H. E. Scott, are held and firmly bound unto J. & T. Green, of Mississippi, in the full and just sum of two thousand two hundred
219 and seventy dollars, to be paid to the said J. & T. Green, their certain attorneys, executors, administrators, or assigns, to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents, sealed with our seals, and dated this third day of June, in the year of our Lord one thousand eight hundred and seventy-four.

Whereas, lately, at a circuit court of the United States for the fourth circuit in and for the district of South Carolina, in a suit pending in said court between J. & T. Green, complainants, and Cyrus H. Baldwin, as receiver of the Exchange Bank of Columbia, and others, defendants, a decree and judgment was rendered against the said defendants, and the said Charles Logan and others, defendants, do take an appeal to the Supreme Court of the United States to reverse the decree and judgment in the aforesaid suit:

Now, the condition of the above obligation is such, that if the said Charles Logan and others shall prosecute their said appeal to effect and answer all damages and costs if they shall fail to make their plea good, then the above obligation to be void, or else to remain in full force and virtue.

CHAS. LOGAN. [L. S.]
JAS. G. GRAHAM. [L. S.]
H. E. SCOTT. [L. S.]

220 Signed, sealed, and delivered in presence of—
GEO. KEENAN.

STATE OF SOUTH CAROLINA,
County of Richland:

James G. Graham, one of the subscribers to the foregoing undertaking, being duly sworn, says that he is a resident and freeholder within this State, and is worth at least the sum of four thousand dollars over all his debts and liabilities, and exclusive of property exempt by law from execution.

J. G. GRAHAM.

Sworn to before me this day of June, 1874.

T. M. WILKES, [L. S.]
U. S. Commissioner for C. & D. Cts. of U. S. for So. Ca. Dist.

STATE OF SOUTH CAROLINA,
County of Richland:

H. E. Scott, one of the subscribers to the foregoing undertaking, being duly sworn, says that he is a resident and freeholder within this State, and is worth at least the sum of five thousand dollars over all his debts and liabilities, and exclusive of property exempt by law from execution.

HENRY E. SCOTT.

221 Sworn to before me this day of June, 1874.

T. M. WILKES, [L. S.]
U. S. Commissioner for C. & D. Cts. of U. S. for So. Ca. Dist.

Approved:

GEO. S. BRYAN,
U. S. Judge, Dist. So. Ca.

6TH JULY, 1874.

And on the 24th day of June, A. D. 1874, came into court the appellant, Arthur W. Kennedy, by James H. Rion, his solicitor, and filed the following supersedeas bond; which bond is in words and of the tenor following:

Supersedeas bond.—A. W. Kennedy.

UNITED STATES OF AMERICA,
State of South Carolina:

Know all men by these presents that we, Arthur W. Kennedy and J. M. Blakely, P. P. Chambers and William McGuinness, are held and firmly bound unto J. & T. Green, of Mississippi, in the full and just sum of four thousand dollars, to be paid to the said J. & T. Green, their certain attorneys, executors, administrators, or assigns, to which payment well and truly to be made we bind ourselves, our heirs, executors, and administrators, jointly and severally by these presents,
222 sealed with our seals and dated this the third day of June, in the year of our Lord one thousand eight hundred and seventy-four.

Whereas lately, at a circuit court of the United States for the fourth circuit in and for the district of South Carolina, in a suit pending in said court between J. & T. Green, complainants, and Cyrus H. Baldwin, as receiver of the Exchange Bank of Columbia, and others, defendants, a decree and judgment was rendered against the said defendants, and the said Arthur W. Kennedy and others, defendants, do take an appeal to the Supreme Court of the United States to reverse the decree and judgment in the aforesaid suit:

Now, the condition of the above obligation is such, that if the said Arthur W. Kennedy and others shall prosecute their said appeal to effect, and answer all damages and costs if they shall fail to make their plea good, then the above obligation to be void; or else to remain in full force and virtue.

A. W. KENNEDY. [L. S.]
J. M. BLAKELY, [L. S.]
P. P. CHAMBERS, [L. S.]
WM. McGUINNESS. [L. S.]
G. W. BEARDEN. [L. S.]

Signed, sealed, and delivered in presence of—
J. K. FRIDAY.
EBEN STENHOUSE.

223 Approved by—
[SEAL.] D. B. MILLER, *C. C. P.*

STATE OF SOUTH CAROLINA,
County of Richland:

George W. Bearden, one of the subscribers to the foregoing undertaking, being duly sworn, says that he is a resident and freeholder within this State, and is worth the sum of at least five thousand dollars over all his debts and liabilities, and exclusive of property exempt by law from execution.

GEO. W. BEARDEN.

Sworn to before me this 24th day of June, 1874.
[SEAL.] D. B. MILLER, *C. C. P.*

STATE OF SOUTH CAROLINA,
County of Richland:

William McGuinness, one of the subscribers to the foregoing undertaking, being duly sworn, says that he is a resident and freeholder within this State, and is worth at least the sum of ten thousand dollars over all his debts and liabilities, and exclusive of property exempt by law from execution.

224 WM. McGUINNESS.

Sworn to before me this 24th day of June, 1874.
[SEAL.] D. B. MILLER, *C. C. P.*

Approved.

GEO. S. BRYAN,
U. S. Judge Dist. S. C.

6TH JULY, 1874.

And on the 24th day of June, A. D. 1874, came into court the appellant, A. Baxter Springs, by James H. Rion, his solicitor, and filed the following supersedeas bond; which bond is in words and of the tenor following:

Supersedeas bond.—A. B. Springs.

UNITED STATES OF AMERICA,
State of South Carolina:

Know all men by these presents that we, A. Baxter Springs, W. R. Myers, and M. P. Pegram, are held and firmly bound unto J. & T. Green, of Mississippi, in the full and just sum of twenty thousand dollars, to be paid to the said J. & T. Green, their certain attorneys, executors, administrators, or assigns, to which payment well and truly to be made we bind ourselves, our heirs, executors, and administrators, jointly and severally by these presents, sealed with our seals and dated
225 this first day of June, in the year of our Lord one thousand eight hundred and seventy-four.

Whereas lately, at a circuit court of the United States for the fourth circuit in and for the district of South Carolina, in a suit pending in said court between J. & T. Green, complainants, and Cyrus H. Baldwin, as receiver of the Exchange Bank of Columbia, and others, defendants, a decree and judgment was rendered against the said defendants, and the said A. Baxter Springs and others, defendants, do take an appeal to the Supreme Court of the United States to reverse the decree and judgment in the aforesaid suit:

Now, the condition of the above obligation is such, that if the said A.

Baxter Springs and others shall prosecute their said appeal to effect, and answer all damages and costs if they shall fail to make their plea good, then the above obligation to be void; or else to remain in full force and virtue.

A. B. SPRINGS. [L. S.]
W. R. MYERS. [L. S.]
M. P. PEGRAM. [L. S.]

Signed, sealed, and delivered in presence of—
JNO. F. ORR.

STATE OF NORTH CAROLINA,
County of Mecklenburg:

226 W. R. Myers, one of the subscribers to the foregoing undertaking, being duly sworn, says that he is a resident and freeholder within this State, and is worth at least the sum of ten thousand dollars over all his debts and liabilities, and exclusive of property exempt by law from execution.

W. R. MYERS.

Sworn to before me this day of June, 1874.

F. W. AHRENS,
U. S. Commissioner.

STATE OF NORTH CAROLINA,
County of Mecklenburg:

M. P. Pegram, one of the subscribers to the foregoing undertaking, being duly sworn, says that he is a resident and freeholder within this State, and is worth at least the sum of ten thousand dollars over all his debts and liabilities, and exclusive of property exempt by law from execution.

M. P. PEGRAM.

Sworn to before me this day of June, 1874.

F. W. AHRENS,
U. S. Commissioner.

Approved:

GEO. S. BRYAN,
U. S. Judge Dist. So. Ca.

6TH JULY, 1874.

227 And on the 24 day of June, A. D. 1874, came into court the petitioners, by James H. Rion, their solicitor, and obtained the following order, allowing appeal, which order is in words and of the tenor following:

Order allowing appeal.

UNITED STATES OF AMERICA,
South Carolina District:

In the circuit court.

J. & T. GREEN, OF MISSISSIPPI,
against
CYRUS H. BALDWIN, RECEIVER OF THE EXchange Bank of Columbia, J. P. Carroll, L. D. Childs, et al.

The defendants, James P. Carroll, A. Baxter Springs, William B.

Stanley, Charles Logan, and Arthur W. Kennedy, having filed their
petition for allowance of their appeal in the above-entitled cause, and
also having filed their several supersedeas-bonds, to wit: the said James
P. Carroll in the penal sum of fourteen thousand dollars, A. Baxter
Springs in the penal sum of twenty thousand dollars, William B. Stanley
in the penal sum of three thousand five hundred dollars, Charles
228 Logan in the penal sum of two thousand two hundred and seventy
dollars, and Arthur W. Kennedy in the penal sum of four thousand
dollars, all of which said bonds I have this day approved: Now, on
hearing the said petition, and on motion of Mr. Rion, petitioner's solicitor,
it is ordered that the said appeal be allowed, and that, pending the
same, all proceedings against the above-named defendants be stayed.

At Charleston, as of the 24th day of June, 1874.

GEO. S. BRYAN,
U. S. Judge Dist. So. Ca.

229 UNITED STATES OF AMERICA,
District of South Carolina, Fourth Circuit:

In circuit court.

I, J. E. Hagood, clerk of the said court, do hereby certify that the foregoing two hundred and twenty-nine pages of written matter is a true and correct copy of the records and proceedings of the decree in the case J. & T. Green against Cyrus H. Baldwin, receiver of the Exchange Bank of Columbia, South Carolina, J. P. Car'ol, L. D. Childs, et al., rendered as aforesaid, together with all things relating the same, the original of which is now on file in this office.

Given under my hand and seal of said court, at clerk's office, in the city of Charleston, in the district aforesaid, this the thirty-first day of July, A. D. 1874.

[SEAL.]

J. E. HAGOOD,
C. C. C. U. S. Dist. of S. C.

230 THE UNITED STATES OF AMERICA,
District of South Carolina, to wit:

At a circuit court of the United States for the fourth circuit, in and for the district of South Carolina, begun and holden at Charleston, in the district aforesaid, on the first Monday in April, 1875, before the honorable Morrison R. Waite, Chief-Justice, and the honorable Hugh L. Bond, circuit judge of the United States for the district of South Carolina, holding said circuit court according to the form of the act of Congress in such case made and provided, the following proceedings were had:

J. & T. GREEN, OF MISSISSIPPI,
vs.
C. H. BALDWIN, RECEIVER OF THE EXCHANGE
Bank of Columbia, et al.

And on the 14th day of December, 1874, came into court John F. Ficken, esq., special master in the above case, and filed the following report, which report is in words and of the tenor following:

Report of special master.

231 THE UNITED STATES OF AMERICA,
South Carolina District, Fourth Circuit:

In the circuit court.

J. & T. GREEN, OF MISSISSIPPI,
vs.
C. H. BALDWIN, RECEIVER OF THE EXCHANGE
Bank of Columbia, et al.

To the honorable the judges of the circuit court of the United States for the district of South Carolina:

By an order of this honorable court, dated 27th April, 1874, it was referred back to me to ascertain and report as to the ownership of shares in the stock of the Exchange Bank of Columbia, So. Ca., in the month of February, A. D. eighteen hundred and sixty-five, or within twelve months previous thereto, by the persons hereinafter named.

The counsel for the plaintiffs have procured and furnished me with the written admissions of said persons, as to said ownership, which admissions are herewith filed.

I find therefrom that James P. Carroll, one of the defendants
232 herein, purchased one hundred and sixty (160) additional shares of the stock of the Exchange Bank of Columbia, So. Ca., before the first day of February, eighteen hundred and sixty-five, and that he continued to hold the same until said last-named date.

That L. D. Childs, another of the defendants, purchased the shares in the stock of said Exchange Bank, standing in his name, on the 20th April, 1863, and continued to own the same up to the first day of February, eighteen hundred and sixty-five.

That Andrew Wallace died in December, 1862, devising and bequeathing his estate to certain trustees, to hold the same for the benefit of his children. The executors of his will divided his estate in 1863, and transferred the stock is said Echange Bank held by their testator at the time of his death to the said trustees named in the will. The said trustees continued to hold said stock from that time for the benefit of the persons named in the answer of William Wallace, executor of Andrew Wallace, filed in this cause.

In said answer the executor admits that on the 1st December,
233 1862, and within twelve months previous thereto, his testator owned four hundred shares in the stock of said bank, and between said last-named date and the 22d December, 1869, owned no additional shares.

That William Martin, executor of the will of Edward J. Arthur, declares that he has no knowledge of his testators having owned one hundred shares in the stock of said bank in 1862, nor any knowledge of his testators having at any time transferred any stock of said bank, and he avers that no scrip or certificate of stock in said bank standing in his testator's name ever came into his hands as executor of said estate.

In his answer, previously filed, said executor states that he is informed and believes that Edward J. Arthur, his testator, on the 1st December, 1862, and within twelve months previous thereto, owned one hundred shares of stock in said bank, and that between the 1st December, 1862, and the 22d December, 1869, said Edward J. Arthur owned no additional shares.

That Z. P. Herndon died on the 12th July, 1859, owning eight hundred and fifty shares of the capital stock of said Exchange Bank
234 of Columbia, and none of said shares were transferred subsequent to the date of his death. This statement is made in writing, and signed by Elizabeth L. Herndon, administratrix.

Mr. Cyrus H. Baldwin appeared in person before me, and deposed that he could not say with certainty what number of shares of the stock of said Exchange Bank he owned on the first day of February, eighteen hundred and sixty-five, but stated that he was willing to admit that he owned at least forty shares of said stock on said last-named date, and possibly more.

I find from the answer of Catharine Macfie, that in September, 1869, she owned one hundred and eighty shares of the stock of said Exchange Bank, and continued to hold the same up to the filing of her answer.

She further therein admits that she had no transaction in reference to said bank between the first day of December, eighteen hundred and sixty-two, and the twenty-second day of December, eighteen hundred and sixty-nine.

Respectfully submitted.

JOHN F. FICKEN,
Special Master.

CHARLESTON, SO. CA.,
Dec'r 14th, 1874.

235 And came into court the complainants, by their attorneys, Corbin & Stone, and filed the following interrogatory; which interrogatory is in words and of the tenor following:

Interrogatory.

UNITED STATES OF AMERICA,
District of South Carolina :

J. & T. GREEN, OF MISSISSIPPI,
vs.
C. H. BALDWIN, RECEIVER OF THE EXCHANGE Bank of Columbia, et al.
} In equity.

Interrogatory to be propounded to James P. Carroll, a witness to be examined for the complainants in the above-entitled cause.

1. In your answer filed in this cause, you state that you owned two hundred shares of stock in the Exchange Bank of Columbia in December, 1862, and that you acquired one hundred and sixty additional shares between December first, 1862, and December 1st, 1869. Please state whether you acquired the said one hundred and sixty additional shares of stock before the first day of February, 1865, and if you
236 continued to hold them until said last-mentioned date.

CORBIN & STONE,
Complainants' Solicitors.

And on the 29th day of September, 1874, came into court J. P. Carroll and filed following answer to interrogatory; which answer is in words and of the tenor following:

Answer.

I did purchase one hundred and sixty additional shares of the stock of the Exchange Bank of Columbia before the 1st day of February, 1865, and continued to hold them until that date.

Sept'r 29th, 1874.

J. P. CARROLL.

And came into court L. D. Childs, by his attorneys, Pope & Haskell, and filed the following admission; which admission is in words and of the tenor following:

Admission.

UNITED STATES OF AMERICA,
District of South Carolina:

J. & T. GREEN, OF MISSISSIPPI,
vs.
C. H. BALDWIN, RECEIVER EXCHANGE BANK of Col'a, S. C.
} In equity.

237 It is admitted by L. D. Childs, one of the defendants in the above-entitled case, that he purchased his stock in the Exchange Bank of Columbia on the 20th day of April, 1863, and held the same until February, 1865.

L. D. CHILDS.

POPE & HASKELL,
Deft.'s Solrs.

And came into court the complainants, by their attorneys, Corbin & Stone, and filed the following interrogatory; which interrogatory is in words and of the tenor following:

Interrogatory.

UNITED STATES OF AMERICA,
District of South Carolina:

J. & T. GREEN, OF MISSISSIPPI,
vs.
C. H. BALDWIN, RECEIVER OF THE EXCHANGE Bank of Columbia, et al.
} In equity.

Interrogatory to be propoumded to William Wallace, executor of the last will of Andrew Wallace, a witness to be called and examined on the part of the complainants in the above-entitled cause.

238 1. In your answer to the bill filed in this cause, you say that Andrew Wallace, your testator, owned four hundred (400) shares of the capital stock of the Exchange Bank of Columbia, in December, 1862. Were any, and, if so, how many, of said shares sold or otherwise transferred by said Andrew Wallace between December, 1862, and December, 1864?

CORBIN & STONE,
Complainants' Solicitors.

And came into court William Wallace, executor of Andrew Wallace, and filed the following answer; which answer is in words and of the tenor following:

Answer.

The said testator, Andrew Wallace, died in Dec., 1862, leaving his property by will to be divided amongst his children, to be held by trustees for them. The executors divided the estate in the early part of 1863, and transferred the shares in the Exchange Bank to the trustees named in the will at that time, who held them subject to the trust from that time, 1863, for the benefit of the parties named in my first answer.

WILLIAM WALLACE.

239 And came into court the complainants, by their attorneys, Corbin & Stone, and filed the following interrogatories; which interrogatories *is* in words and of the tenor following:

Interrogatories.

UNITED STATES OF AMERICA,
District of South Carolina:

J. & T. GREEN, OF MISSISSIPPI,
vs.
C. H. BALDWIN, RECEIVER OF THE EXCHANGE Bank of Columbia, et al.
} In equity.

Interrogatories to be propounded to William Martin, executor of the will of E. J. Arthur, deceased, a witness to be called and examined on the part of the complainants in the above-entitled cause.

I. In your answer to the bill filed in the above-entitled cause, you say your testator, E. J. Arthur, owned one hundred shares of the capital stock of the Exchange Bank of Columbia, on the first day of December, 1862.

240 Please state whether any, and, if so, how many, of these shares were transferred by him, or by you as his executor, between said date and February, 1865, giving also date of such transfer, if any there were.

CORBIN & STONE,
Complainants' Solicitors.

And on the 3rd October, 1874, came into court William Martin, executor of E. J. Arthur, and filed the following answer; which answer is in words and of the tenor following:

Answer.

1st. I have no knowledge of Mr. Arthur having owned one hundred shares of Exchange Bank stock in 1862.

2nd. I have no knowledge of Mr. Arthur having made a transfer of Exchange Bank stock within the time specified or at any other time.

3rd. No scrip or certificate of Exchange Bank stock came into my hands as executor of the estate of E. J. Arthur.

Columbia, S. C., Oct. 3rd, 1874.

WILLIAM MARTIN, *Ex.*

And came into court the complainants, by their attorneys, Corbin & Stone, and filed the following interrogatory; which interrogatory is in words and of the tenor following:

241 *Interrogatory.*

UNITED STATES OF AMERICA,
District of South Carolina:

J. & T. GREEN, OF MISSISSIPPI,
vs.
C. H. BALDWIN, RECEIVER OF THE EXCHANGE Bank of Columbia, et al. } In equity.

Interrogatory to be propounded to Mrs. Elizabeth L. Herndon, administratrix of the estate of Zachariah P. Herndon, a witness to be called and examined by commission on behalf of the complainant.

1. In your answer to the bill filed in the above-entitled cause you say that the said Zachariah P. Herndon owned in Dec., 1862, eight hundred and fifty (850) shares of the capital stock of the Exchange Bank of Columbia, and that he subsequently acquired no other shares.

Please state whether or not any of those shares, and, if so, how many, were transferred by him subsequent to Dec., 1862, and give the date of such transfer, if any there were.

242 CORBIN & STONE,
Complainants' Solicitors.

And on the day of October, 1874, came into court Mrs. Elizabeth L. Herndon, administratrix of Zachariah P. Herndon, and filed the following answer; which answer is in words and of the tenor following:

UNITED STATES OF AMERICA,
District of South Carolina:

J. & T. GREEN, OF MISSISSIPPI, PLAINTIFF,
against
C. H. BALDWIN, RECEIVER OF THE EXCHANGE Bank of Columbia, et al., defendants. } In equity.

Answer of Mrs. Elizabeth L. Herndon, administratrix of the estate of Zachariah P. Herndon, to the interrogatory propounded by commission on behalf of the complainant.

1. Col. Z. P. Herndon died on the twelfth day of July, A. D. eighteen hundred and fifty-nine.

At the time of his death he owned *owned* eight hundred and
243 fifty (850) shares of the capital stock of the Exchange Bank of Columbia, and none of said shares were transferred subsequent to the date of his death.

E. L. HERNDON.

OCTOBER, 1874.

And on the 7th day of December, 1874, came into court C. H. Baldwin, and filed the following affidavit; which affidavit is in words and of the tenor following:

UNITED STATES OF AMERICA,
South Carolina District:

J. & T. GREEN
vs.
C. H. BALDWIN, RECEIVER OF EXCHANGE BANK of Columbia, et al.
} In equity.

C. H. BALDWIN, being duly sworn, says that he was the owner of say forty shares (40 shares) in the stock of the Exchange Bank of Columbia in February, 1865, and for some time previous thereto. He cannot speak with certainty as to the exact number of shares which he did own, and it is possible that he may have owned more.

C. H. BALDWIN.

244 Sworn to before me this 7th Dec., 1874.

JNO. F. FICKEN,
Special Master.

And at the said April term, 1875, of the said court the said complainants came into court, by their solicitors, Corbin & Stone, and the cause was heard upon the pleadings and report of the special master, and the evidence taken by him, and, on motion of Corbin & Stone, complainants' solicitors, the following decree was rendered; which decree is in words and of the tenor following:

Decree.

THE UNITED STATES OF AMERICA,
District of South Carolina:

In equity. April term, 1875.

Present, Hon. M. R. Waite, Chief-Justice, & Hon. H. L. Bond, circuit judge.

J. & T. GREEN
vs.
CYRUS H. BALDWIN, RECEIVER OF THE Exchange Bank of Columbia, James P. Carroll, et al.
}

The issues of law in this case having been heard and determined at the April term, 1874, of this court, and an order having been made on the 27th day of April, 1874, referring back the said cause to
245 J. F. Ficken, esq., special master, to ascertain and report as to the ownership of shares of stock of the Exchange Bank of Columbia in February, 1865, or within twelve months previous thereto, by certain defendants hereinafter named, and the said special master having filed his report on the 14th day of December, 1874, with the proof in support of the same, said proof being the written admissions of the said several defendants, and no exceptions to said report having been filed; now, therefore, on motion of Messrs. Corbin & Stone, complain-

ants' solicitors, it is ordered, adjudged, and decreed that said report be in all things confirmed.

It is further adjudged and decreed that in the month of February, 1865, and within twelve months previous thereto, defendants James P. Carroll owned one hundred and sixty (160) shares of stock in said bank in addition to the two hundred (200) shares heretofore adjudged to belong to him.

L. D. Childs owned two hundred (200) shares of stock in said bank.

Cyrus H. Baldwin owned forty (40) shares of stock in said bank.

246 Catharine McAfie owned one hundred and eighty (180) shares of stock of said bank.

As to the estates of Andrew Wallace, Edward J. Arthur, and Zachariah P. Herndon, it is adjudged as follows:

Andrew Wallace died in December, 1862, owning four hundred (400) shares of stock of said bank. The said stock was transferred to trustees named in said Andrew Wallace's will, in 1863, who continued to hold the same from that time and who held it in February, 1865. The names of said trustees are not disclosed in the answer of William Wallace, executor, nor has said executor filed a plea of plene administravit.

The estate of said Andrew Wallace is therefore adjudged to be liable upon said stock to an amount equal to twice the par value of said stock, and judgment will be entered against said executor for the same.

Edward J. Arthur is charged in the bill with owning one (100) shares of stock of said bank in 1862. William Martin, his executor, has admitted in his answer the ownership of this stock by his testator, and
247 has not shown that the said stock was disposed of in any way
before February, 1865, nor has he filed a plea of plene administravit. The said William Martin, executor, is therefore adjudged to be liable for said stock as are holders of said stock in their own right.

Zachariah P. Herndon died on the 12th day of July, 1859, owning eight hundred and fifty (850) shares of the capital stock of said bank, none of which were transferred subsequent to the date of his death. The administratrix has filed no plea of plene administravit.

The said Elizabeth L. Herndon, administratrix, is therefore adjudged to be liable for said stock as are holders of stock in their own right.

It is further adjudged and decreed that there are due from the said defendants to the complainants and to the other bill-holders named in the decree of this court of April 27, 1874, the following sums, (being amounts equal to twice the face-value of said stock held by them respectively,) namely:

James P. Carroll, eight thousand (8,000) dollars in addition to the ten thousand dollars (10,000) heretofore adjudged against him.

248 L. D. Childs, ten thousand (10,000) dollars.

Cyrus H. Baldwin, two thousand (2,000) dollars; Catharine McAfie, nine thousand (9,000) dollars; William Wallace, executor of last will of Andrew Wallace, deceased, twenty thousand (20,000) dollars.

William Martin, executor of last will of Edward J. Arthur, ten thousand (10,000) dollars.

Elizabeth L. Herndon, administratrix of Zachariah P. Herndon, forty-two thousand five hundred (42,500) dollars.

And it is further adjudged and decreed that the said complainants have execution against said several defendants for the said several sums herein adjudged against them respectively, and costs, and that the amounts collected upon said executions be paid into the registry of the court for distribution under the order of the court.

And it is further ordered that the complainants have leave to move for such other and further orders herein as may be necessary to carry out the purposes of this decree.

HUGH L. BOND,
C't Judge.

MAY 14, 1875.

249 UNITED STATES OF AMERICA,
District of South Carolina, Fourth Circuit:

In the circuit court.

I, J. E. Hagood, clerk of the circuit court of the United States for the district of South Carolina, do hereby certify that the foregoing 19 pages of written matter doth contain a true and correct copy of the records and proceedings of the report of the special master and decree in the case of J. & T. Green, complainants, vs. Cyrus H. Baldwin, receiver of the Exchange Bank of Columbia, and others, defendants, rendered as aforesaid, together with all things relating thereto.

Given under my and the seal of the said court, at clerk's office in the city of Charleston, in the district aforesaid, this the 5 day of June, A. D. 1875.

[SEAL.]

J. E. HAGOOD,
C. C. C. U. S. Dist. S. C.

250 UNITED STATES OF AMERICA,
South Carolina District:

In the circuit court.

J. & T. GREEN, OF MISSISSIPPI,
against
CYRUS H. BALDWIN, RECEIVER OF THE Exchange Bank of Columbia, J. P. Carroll, L. D. Childs, et al.

The defendants, James P. Carroll, Lysander D. Childs, Catherine Macfie, William Wallace, as executor of the last will and testament of Andrew F. Wallace, deceased, William Martin, as executor of the last will and testament of Edward J. Arthur, deceased, and Elizabeth L. Herndon, as administratrix of the estate of Zachariah P. Herndon, deceased, having filed their petition for allowance of their supplemental appeal in the above-entitled cause, and the said James P. Carroll having filed a stipulation, and the said Lysander D. Childs having filed his supersedeas-bond in the penal sum of twenty thousand dollars, and the said William Wallace, executor, William Martin executor, Elizabeth L. Herndon, administratrix, and Catherine Macfie, having filed their several bonds
251 for costs, each in the penal sum of three hundred dollars, all of which
said bonds I have this day approved; now, on hearing the said petition, and on motion of Mr. Rion, petitioners' solicitor, and by consent of Messrs. Corbin & Stone, solicitors for the plaintiffs, it is ordered that the said appeal be allowed as part of, and in conjunction with, the appeal in this cause already on docket, and that, pending the same, all proceedings against the above-named defendants be stayed.

At Charleston, S. C., this the 8 day of July, A. D. 1875.

GEO. S. BRYAN,
U. S. Judge, Dist. of S. C.

We consent to the foregoing order.

CORBIN & JONES,
Sol. for J. & T. Green.

I, J. E. Hagood, clerk of the said court, do hereby certify that the foregoing order, allowance of supplemental appeal, is a true copy of the original order, now on file in my office.

252 Given under my hand & seal of said court, at clerk's office, in the city of Charleston, this the 8 day of July, 1875.

[SEAL.] J. E. HAGOOD,
C. C. C. U. S. Dist. S. C.

(Indorsed:) United States of America, South Carolina district. J. & T. Green, of Mississippi, against Cyrus H. Baldwin, receiver of the Exchange Bank of Columbia, J. P. Carroll, L. D. Childs, et al. Order allowing supplemental appeal. Copy.

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253 UNITED STATES OF AMERICA,
South Carolina District:

Fourth circuit. In equity.

J. & T. GREEN, OF MISSISSIPPI,
against
CYRUS H. BALDWIN, RECEIVER OF THE Exchange Bank of Columbia, J. P. Carroll, L. D. Childs, and others, stockholders.
} Bill for discovery and relief.

The undersigned, solicitors for the plaintiff and the defendants, do hereby agree and consent that the appeal of all the defendants against whom decree has been made, and who have filed their petition for appeal, and their petitions been granted, be heard at the one and same time by the Supreme Court of the United States, we regarding the whole as making up one complete appeal, and we do hereby stipulate to be bound by the decision of the said Supreme Court that may be rendered upon the appeal heard, as above consented to by us.

JAS. H. RION,
Solicitor for Defendants.
D. T. CORBIN,
Per CORBIN & STONE,
Solicitors for Plaintiffs.
W. W. BOYCE,
Counsel for Appellants.

AUG. 5, '75.

(Indorsed:) Sup. Court U. S. 1875, October term. No. 216. James P. Carroll et al., app'ts, vs. Joshua & Thomas Green. Stipulation of counsel & addition to record. Filed 17th August, 1875.

(Indorsement on cover:) No. 216. James P. Carroll, A. Baxter Springs, William B. Stanley, Charles Logan, and Arthur W. Kennedy, appellants, vs. Joshua and Thomas Green. S. Carolina C. C. U. S. Filed 6th August, 1874.

Supreme Court of the United States.

OCTOBER TERM, 1875.

JAMES P. CARROLL *et al.*, Appellants,
vs.
JOSHUA and THOMAS GREEN, Appellees.
No. 216.

Appeal from the Circuit Court of the United States for the District of South Carolina.

APPELLANTS' BRIEF.

I.—STATEMENT.

The bill filed in the court below by Joshua and Thomas Green, plaintiffs, was filed on behalf of said plaintiffs below, holders of bills of the Exchange Bank of Columbia, South Carolina, and all other holders of bills of the said bank, who might come in against C. H. Baldwin, receiver of said bank, James P. Carroll, and other stockholders and legal representative of stockholders in said bank, to compel said stockholders, by virtue of certain alleged provisions in the charter of said bank to pay said bills out of their individual estates, the said bank having failed.

Inter alia said bill alleged that, by the act of the South Carolina Legislature of December 16, 1852, chartering said Exchange Bank, the "said bank was endowed with the same rights and privileges and subject to the same duties, liabilities, obligations, regulations, and restrictions provided for the Planters and Mechanics' Bank," (a then existing chartered bank of the State of South Carolina.) (Transcript, sec. 4, p. 2.)

That, "by the fourth section of the act above recited, (the said act of December 16, 1852,) it is provided that, in case of the failure of the said bank, (Planters' and Mechanics',) each stockholder copartnership or body politic having a share or shares in such bank at the time of such failure, or who shall have been interested therein at any time within twelve months previous to such failure, shall be liable and held bound, individually, for any sum not exceeding twice the amount of his, her, or their share or shares."

The bill alleges that the plaintiffs were the lawful holders of bank bills of said bank to the amount of $5,345; that demand had been made for the payment of said bills, and payment refused.

That, by an act of the General Assembly of the State of South Carolina entitled "An act to enable the banks of the State to resume business or to place them in liquidation," approved March 13, 1869, it was provided in words as follows:

> "SECTION 1. That all the banks incorporated by authority of this State, and which have by such authority issued bills of credit known as bank bills, and have failed to comply with said corporate privileges by refusing to pay their bills of credit, and are now thus failing to comply with the provisions of said act of incorporation in this particular, and shall so continue to violate said act until the 1st day of December, 1869, shall forfeit all corporate rights and privileges and are forbidden to transact any business as banking institutions." (Transcript, sec. 5, p. 2.)

That, by the second section of said last-mentioned act, the circuit judge of the State court within whose circuit such bank may be situated, upon notice of any bank's failing to pay its bills, is authorized to appoint a receiver for such bank.

That upon the failure of the said Exchange Bank to pay its bills, Cyrus H. Baldwin was duly appointed receiver of said bank.

That on the first day of December, 1862, and previous thereto, the said Exchange Bank had failed.

That in consequence of the failure of said bank, by reason of the provisions of the said fourth section of the said act of December 16, 1852, entitled "An act to recharter the Planters and Mechanics' Bank of South Carolina, and to incorporate the Exchange Bank of Columbia," &c., the stockholders holding shares in said bank, or who had been interested therein within twelve months previous to said failure, became liable for the debts of said bank for sums not exceeding twice the amount of their shares held by them respectively.

Answers were put in by certain of the defendants.

To this bill defendants answered, admitting that the Exchange Bank was a corporation created by act of the General Assembly of the State of South Carolina of December 16, 1852.

That said Exchange Bank did issue certain bank notes payable to bearer, but they do not know whether the bank issued the bank bills described in schedule 4 annexed to the bill, nor do they know that plaintiffs were the rightful owners of said bills, and demand strict proof thereof.

That they do not know whether said Exchange Bank had failed on December 1, 1862.

States the number of shares they held from December 1, 1862, to December 22, 1869.

Defendants interposed several pleas in their answer *inter alia*.

That by the second section of the act chartering the said Exchange Bank, passed December 16, 1852, it was provided that the said Exchange Bank "shall be subject to all the provisions of an act passed on the 18th of December, 1840," entitled "An act to provide against the suspension of specie payments by the banks of this State;" and by the fifth section of the first above-mentioned act it was also provided "that it shall not be lawful for the said Exchange Bank, except in settlement with other banks, to pay or deliver in payment or satisfaction of any demand upon it, or by way of loan or discount, any bill, note, check, or other paper of any other bank." That the operation of said second and fifth sections were suspended by an act of the General Assembly passed on the 21st of December, 1857, and continued to be suspended by other subsequent acts until the said Exchange Bank became insolvent and failed, whereby whatever liability may have been, if any was imposed upon these defendants by the fourth section of the act of December 16, 1852, became and was in law removed and annulled.

And further, that on the 13th of March, 1869, an act was passed by the General Assembly providing that, unless the said Exchange Bank should, on or before December 1, 1869, commence paying their bills of credit, &c., and in other respects comply with the terms of their charter, the said bank should forfeit all corporate rights and privileges. That the said Exchange Bank failed to pay its bills of credit and in any respect to comply with the provisions of its act of incorporation before or on said 1st day of December, 1869, or since; that said act of the General Assembly of March 13, 1869, did not provide for a continuation of the liability of the stockholders of said bank after said forfeiture of its corporate rights and privileges.

Several other matters were pleaded, but as they appear not to have been urged upon the hearing, it is deemed unnecessary to mention them.

On putting in replication an order of reference was made to a special master to take the testimony and report the facts. (Transcript, pp. 57-58.)

The special master reported October 8, 1873, among other things—

That by the terms of the act of December 16, 1872, incorporating the Exchange Bank, each shareholder who should own stock in said bank at the date of its failure, or at any time within twelve months previous to such failure, shall be liable and held bound for the debts of said bank to the extent of double the amount of his or her interest in said stock.

That the Exchange Bank became insolvent in February, 1865.

That a receiver was appointed by the State court November 24, 1869.

That the assets of the bank amount only to $1,910.29, and are wholly insufficient to meet the claim of the plaintiffs.

That plaintiffs were holders of bills of the bank.

State's shares held by defendants.

On 29th of October, 1873, defendants filed two exceptions to report of special master.

1. That the master reports that by the charter of the Exchange Bank each shareholder owning stock at the date of failure of said bank, or within twelve months previous, was liable to double the amount of his interest in said stock.

2. That said master did not report the proceedings had in the Circuit Court for Richland county in 1870, whereby, on surrender of charter by the bank, all creditors thereof were called on to prove their demands, and a receiver appointed, all of which were in proof. (Transcript, pp. 72–73.)

After argument, these exceptions were allowed. (Transcript, p. 73.)

On the 9th of February, 1874, defendants filed a suggestion in court, setting forth that since the last continuance of the cause, to wit, January 1, 1874, the charter of the Exchange Bank had expired by its own limitation, and thereby all liability of defendants became extinct. (Transcript, p. 73.)

To which suggestion plaintiffs filed a demurrer. (Transcript, p. 74.)

At the April term, 1874, the cause was heard on the pleadings and reports, and the court decreed April 27th, 1874:

> "That the persons who held shares of stock in the Exchange Bank of Columbia in the month of February, 1865, or who were interested therein, within twelve months previous to said February, 1865, are liable and held bound individually to the complainants herein for a sum not ex-

ceeding twice the amount of the share or shares held by said shareholders respectively." (Transcript, p. 79.)

The decree goes on to make certain specific directions which, as not affecting the general question of liability of defendants below, it is not deemed necessary to mention now, though attention will be called to the same hereafter for another purpose.

The questions involved in this case are exclusively questions of law, there being as the case now stands no controversy about the facts.

The questions of law are as follows:

First. Whether there was any provision in the charter of the Exchange Bank by which the shareholders at the time of the failure of the bank, or within twelve months previous thereto, are made liable to the creditors of the bank to twice the amount of the stock held by them.

Second. If such liability is provided by the charter, have the shareholders been discharged therefrom by anything which has occurred since the granting of the charter in December, 1852.

Third. If the general liability of the shareholders to the creditors of the bank is established, the question arises whether the decree as rendered is proper in other particulars.

1. As to the defendant, William Wallace, executor of Andrew Wallace, it appears that the executor divided the estate of his testator in 1863, as directed in his will, and transferred the stock held by testator in the Exchange Bank to certain trustees who are not parties to the suit, to hold the same for the benefit of said testator's children, and that said trustees continued to hold said stock for the benefit of the *cestui que trusts*. (Report of J. F. Ficklen, special master, Transcript, p. 90, sec. 232.)

2. In the case of the defendant, W. Martin, executor of Edward S. Arthur, there is no proof of the testator, Arthur, holding any stock in the bank later than December 1, 1862. (Report of special master J. F. Ficklen, Transcript, p. 90, sec. 233.)

It is to be noted that no exceptions were filed to the above cited report of the special master. (Transcript, p. 95, sec. 245.)

And yet the executor of Wallace and the executor of Arthur are adjudged to be individually liable for the stock held by them in their representative capacity in 1863 and 1862, on the ground that the said executors did not plead *plene administravit*.

3. While the amount in judgment for the plaintiffs and other billholders is $52,000, the judgments rendered against the defendants is $150,000, so that plaintiffs may collect nearly the whole amount adjudged in their favor against one of the defendants, there being no consideration of the rights of the defendants *inter sese* or provision for contribution.

4. There is no proper adjustment of the sums to be paid where the defendants have already redeemed bills, judgment being given against such defendants, as against other defendants who have not redeemed bills, judgment being given for the defendants who have redeemed bills, but without allowance of set-off.

The last-mentioned class of questions, in regard to the executor of Wallace, the executor of Arthur, and the form of the decree against the defendants generally, arise out of the decree of May 14, 1875. (Transcript, p. 96.)

II.—Assignment of Errors.

The decrees below are erroneous in the following particulars:

First. In holding that "the persons who held shares of stock in the Exchange Bank of Columbia in the month of February, 1865, or who were interested therein within twelve months previous to said February, 1865, are liable and held bound individually to the complainants herein for a sum not exceeding twice the amount of the share or shares held by said shareholders," and for the following reasons:

a. The provision of individual liability of stockholders, contained in the IVth section of the charter of the Planters' and Mechanics' Bank, if a part of the charter of the Exchange Bank, is a liability to the State, and not to the creditors of the bank.

b. Section IV of the charter of the Planters' and Mechanics' Bank is not a part of the charter of the Exchange Bank.

c. The said section IV, if originally a part of the charter of the Exchange Bank, became annulled, repealed, and forfeited, and of no force and effect by reason of the act of Assembly of the State of South Carolina of March 13, 1869, and subsequent proceedings at the instance of the State, by which a receiver was appointed.

d. The charter of the bank having expired on January 1st, 1874, all debts of the bank were extinguished, and so the stockholders were discharged, if ever liable.

e. The shares held by Andrew Wallace, deceased, having been transferred, in pursuance of the will of the testator by his executor, William Wallace, defendant, in 1863 to trustees, who held such stock in February, 1865, and who are not parties to the suit, it was error to decree that the estate of said testator was liable upon said stock, and that judgment should be entered against the executor individually for want of a plea of *plene administravit*.

f. That William Martin, executor of Edward J. Arthur, should not have been held liable, individually, for the shares charged to have been held by his testator in 1862.

g. That the plaintiffs, being held entitled to only $52,000, it was erroneous to enter judgment against the defendants to the amount of $150,000, whereas the plaintiffs should only have had a *pro rata* judgment against defendants, whose rights to contribution *inter sese* should have been provided for.

h. There is no proper adjustment of the sums to be paid where the defendants have already redeemed bills, judgment being given against such defendants without crediting them with the bills paid by them, there being no distinction in the judgments between such defendants and those defendants who have not redeemed bills, though judgments are rendered in favor of such defendants for the bills redeemed by them.

III.—Argument.

The appellees allege the liability of the stockholders under the following section of the act of December 16, 1852, rechartering the Planters' and Mechanics' Bank and chartering the Exchange Bank, (12 Stats., p. 212:)

"IV. That in case of the failure of said bank, each stockholder, copartnership, or body politic having a share or shares in such bank at the time of such failure, or who shall have been interested therein at any time within twelve months previous to such failure, shall be liable and held bound individually for any sum not exceeding twice the amount of his, her, or their share or shares." (12 Stats. at large of So. Ca., p. 212.)

If we can show that the liability under said section is one to the State, and not to the complainant, or that the said IVth section is not a part of the charter of the Exchange Bank, or that whatever liability once existed has ceased to exist, then our defense is established.

This we propose to do.

I. The section referred to creates a liability to the State to enable it to enforce certain penalties against the bank in case of its failure.

(*a*.) Let us examine this section isolated from the connecting sections, and the legislation bearing upon the subject.

Upon reading the section we are suprised to find that it does not provide *for what* the stockholders are to be liable, nor *to whom* they are to be held liable. This is strange, but the appellees solve the mystery by telling us that it *means* that the liability of the stockholder is to the *bill-*

holder for the redemption of the bills, and may be enforced by any appropriate form of action.

This clears up everything, if we stop here. But we then are surprised at the *obscurity* of such important legislation. It may be, though, that such is the *style* of the South Carolina Legislature. We then read the statutes about the date of the section in question, and we find that all the acts seem to be drawn by skillful hands, and historically we find that a large portion of the Legislature prior to 1866 consisted of the *best legal talent* in the State. Again we find that in other acts prescribing liabilities in charters the enactments are full and definite. Among many examples we cite 8 Stats. at Large, p. 20, subd. 4, sec. 5, where directors are made liable; also 8 Stats. at Large, p. 463, sec. 2, where provision is made for the liabilities of the Bivingsville Manufacturing Company. This solution, then, will not do.

It may be, then, that this form of providing a liability is one that is usual with the United States Congress and the Legislatures of the States generally. But when we examine the acts of Congress (*e. g.,* U. S. Stats., 103, section 12, National Banks,) and the acts of the several States touching corporations, and especially *banks,* we in *no instance* find *one* case where the act has failed to provide *for what* liable, and *to whom liable!* These acts make the stockholder liable for the redemption of the bills, for the debts of the corporation, for the liabilities of the bank, to the billholders, to the creditors, or some language equivalent. This solution will not do.

Our confidence being shaken in the easy solution given by the appellees, causes us to inquire into the foundation of *statutory* liability.

Our research in this direction will teach us the following well-established rules of law:

1st. Without legislative enactment the stockholders in the case of a failure would only lose their stock.

2d. When shareholders are made liable by statute they can only be made liable, in the manner, to the extent, under the circumstances, and for the precise defaults provided in the statute.

3d. As a corollary to the above—that the shareholder is not required to disprove his liability, but the creditor to point out *clearly* the legislative provision creating without doubt the liability.

This makes us bolder. We say put your finger on the words that make a stockholder liable for the *bills* or for an indebtedness of the bank, to *a billholder* or *to a creditor*. Where are the words?

The billholder replies, but if the section has not the meaning given it, what does it mean? We reply, this is not our business; if we are liable we must be plainly and not obscurely so; but we will answer the question.

(*b*.) The words are, "shall be liable *and held bound?*" Those words are suggestive of a *penalty*. The word "liable" alone would suit your purpose, but the Legislature added, "and held bound."

Now, let us look at the sections in the said act of December 16, 1852, which precede and follow said section IV, and that section ceases to be obscure.

Section III provides a liability on the part of the bank to pay the *State taxes* on the capital stock and other property.

Section II provides that the bank shall be subject to all the provisions of an act passed 18th of December, 1840, entitled "An act to provide against the suspension of specie payments," and also to such regulations and restrictions as the Legislature shall from time to time impose.

Looking at the act of 18th of December, 1840, (11 Stats. at Large, p. 100,) we find that banks which suspend specie payment shall become liable to pay the State, *monthly*, five per cent. upon its whole circulation, (or sixty per cent. per annum.) What a liability? If the bank issued bills double in amount of its capital, which many did, then one year's suspension would create a liability much beyond the amount of all the stock. This is to be recovered by action of debt.

Again, we find in the act of 1840, a requirement of monthly returns in a specific form; and a liability to pay $100 *per diem* in the case of failure, to the State, to be recovered by action of debt at the suit of the Comptroller. Again, the Comptroller is charged (p. 102) to collect all these penalties, and any obstacle thereon in his way is to be punished by *fine* and imprisonment.

Section V (in act of 1852, next after section IV,) provides that no bank shall pay out from its counter the bills of other banks; and prescribes a liability to pay $100 for every offense, to be recovered by action of debt. (Observe, always "by action of debt," and always *by whom* to be brought.)

We have thus given the group in which said section IV is found. We might cite other liabilities imposed elsewhere on the banks, all providing to whom, in what way, and how liable, but this "group" is enough for our purpose.

After the provisions of these sections (II, III, and V) any more explicit language in section IV would be redundant, useless, and pleonastic, and would in some connections (where different officers or persons are to bring suit) become obscure and conflicting without the employment of very many explanatory words. Read all the sections together, and, also, the act of 1840, and everything is plain. The banks are required to do, or not to do, certain things. Very heavy penalties are provided. In all cases the language is of becoming "liable to pay," or the equivalent. In all cases it is provided *for what* the liability is to be incurred. In all cases it 'provides *to whom* the liability is. In all cases it provides in an action of debt.

Now, as long as the bank is solvent, these penalties can be collected out of the bank; but suppose the bank were to fail, (which it would soon do under some of the monthly and daily penalties,) how is the State to collect the amount of these liabilities? The natural justice of the relation suggests that the *stockholders,* who ought to watch over the bank officers, who elect those officers, and who receive the profits of the bank operations, should be liable and held bound for these penalties, and liable in such an amount as would secure the collection of the largest long-continued penalty and in equitable proportion between them.

Now, let us repeat the section, word for word, and see how clear and free from obscurity it is:

> "IV. That in case of the failure of said bank each stockholder, copartnership, or body politic having a share or shares in such bank at the time of such failure, or who shall have been interested therein at any time within twelve months previous to such failure, shall be liable and held bound individually for any sum not exceeding twice the amount of his, her, or their share or shares."

This construction and these views show plainly that the plaintiffs below have no rights under this section, nor the stockholder any liability to them for their bills or any other debt.

2. But we insist that section IV is not a part of the charter of the Exchange Bank.

The act rechartering the Planters' and Mechanics' Bank of South Carolina and chartering the Exchange and other banks, referred to in complainant's bill, (12 Stats., 212,) in sec. VIII provides:

> "That the following eight banks are hereby incorporated to be named and known as follows, to wit, one in Columbia to be known as the 'Exchange Bank of Columbia,' with a capital of five hundred thousand dollars, * * * * * * which said bank shall have and possess the same duties, liabilities, obligations, regulations, and restrictions herein provided for the said Planters' and Mechanics' Bank." * * * * * *

If there is any liability on the part of the *stockholders*, it arises from the latter part of the section cited, where the duties, liabilities, &c., are provided for the *bank*. This is the liability, as alleged in the bill, and the only liability admitted in the answer.

Now, this part of section VIII has been construed by the court of last resort for South Carolina in the case of *The State* v. *Lehre*, 7 Richardson's Law, 234.

The IXth section of the act provided for the powers and duties of commissioners, who were to receive subscriptions for stock in the eight new banks. It was claimed that the original charter of the Planters' and Mechanics' Bank, and the act of the recharter were to determine the matter. But the court held (p. 252) that the latter clause of section VIII "clearly refers to the restrictions, regulations, &c., to be subject to the bank act of 1840, to be liable to taxation, &c., which, by the first section of the act, were imposed on the Planters and Mechanics' Bank."

Page 318: "A plain interpretation of the language employed leaves no doubt that the intention was, as it is expressed, to grant to the new banks the corporate powers contained in the old charters, which were renewed, subject to the restrictions and liabilities imposed by this act. *The relators contend that the charter of the Planters' and Mechanics' Bank was the standard which the clause of reference intended to adopt for the eight new banks.* It might be enough to say in reply to this view, that it is not supported by the plain reading of the statute, and if such were the intention, we can say of the Legislature, *quod voluit, non dixit.*"

The same line of reasoning is stronger when applied to the stockholders, for not only does the act nowhere provide that "the *stockholders* shall be subject to the same liabilities, &c., as provided for the stockholders of the Planters' and Mechanics' Bank," but where the stockholders of the new bank are mentioned the provision (sec. IX) is simply that when they have subscribed the requisite amount they "shall thereupon become a body corporate, with the same *privileges* and *rights* as the *stockholders* of the banks whose charters are hereby renewed." Why did not the Legislature provide that they should be subject to the same liabilities, &c.? But, say the appellees, the Legislature so intended. We would reply in the language of the appeal court, if so, then *quod voluit, non dixit.* The act clearly makes a distinction between the stockholders in their corporate capacity as a *bank* and the stockholders in their individual capacity as shareholders.

3. The next position we take is, that even if section IV be given the violent construction contended for by the plaintiffs below, and if it be a part of the charter of the Exchange Bank, it is no longer of force on account of the legal effect of an act of the Legislature, (14 Stats., 212,) which is as follows:

AN ACT TO ENABLE THE BANKS OF THE STATE TO RENEW BUSINESS OR TO PLACE THEM IN LIQUIDATION.

SECTION 1. *Be it enacted by the Senate and House of Representatives of the State of South Carolina, now met and sitting in General Assembly, and by the authority of the same,* That all the banks incorporated by authority of this State, and which have by said authority issued bills of credit known as bank bills, and have failed to comply with said corporate privileges by refusing to pay their bills of credit, and are now thus failing to comply with the provisions of said act of incorporation in this particular, and shall so continue to violate said act until the first day of December, 1869, shall forfeit all corporate rights and privileges, and are forbidden to transact any business as banking institutions: *Provided,* That the redemption of their bills in United States currency shall be deemed the fulfillment of their obligations to the holders of said bills.

SEC. 2. That it shall be the duty of the comptroller general, immediately after the ratification of this act, to furnish each of said banks of the State with a copy thereof, and they shall report thereon to the Comptroller General, giving a full statement of all the property and assets and liabilities of the bank, and shall furnish a full statement of all their transactions every thirty days thereafter; and for every case of failure or neglect to so report, the officers of the bank shall forfeit and pay twenty-five dollars for each day so failing, to be collected by the sheriff of the county on the order of the Comptroller General, approved by the Governor, to be appropriated to the use of the State; and if any of the banks agree to redeem their bills, the Comptroller General shall give notice of said agreement in one or more of the newspapers of this State, and shall notify the judge of the circuit in which the said bank or banks may be situated of each and every bank failing to comply with the requirements of the first section of this act, whose duty it shall be to appoint a suitable person as receiver of each of the aforesaid banks, who shall, after having filed a bond, with good and sufficient security, to be approved by the said judge, take charge of the property and assets of the bank.

SEC. 3. That the said receiver shall furnish the Comptroller General with a full statement of all the property and assets belonging to the said bank, immediately after receiving the same, and shall proceed to the final settlement of the accounts of the bank, in conformity to such rules as the Circuit Court may direct.

SEC. 4. Any of the banks redeeming their bills in conformity with the provisions of the second section of this act, and are able to redeem the same, and have remaining in their possession assets of the market value of fifty thousand dollars, may resume business as a banking corporation, after satisfying the Governor and the Comptroller General that they are possessed in fact of the said amount; and the Comptroller General shall make known the same by public notice in one or more newspapers of the State.

SEC. 5. The banks resuming business in accordance with the provisions of this act shall report to the Comptroller General, as now provided by law, and their charters shall be deemed as redeemed for the amount so advertised by the Comptroller General: *Provided*, That no bank shall be so rechartered with a capital of less than fifty thousand nor more than one million dollars: *Provided*, *further*, That all banks rechartered and recommencing business under this act shall be subject to taxation.

SEC. 6. That all acts or parts of acts inconsistent with this act be, and the same are hereby, repealed.

Approved March 13, 1869. (14 Stats. at Large, p. —.)

The question had been raised before in South Carolina in the case of the Bank *v.* Ahrens, where the *bank* pleaded the extinction of its charter. The court decided adversely to the plea, Justice Willard delivering the opinion of the court, Justice Wright concurring, and Chief Justice Moses dissenting. One ground upon which the decision is based is, that the *bank* itself could not be allowed to come into court and plead its own non-existence.

Here the stockholders in their individual capacity make the plea.

The ground we take is, that by forfeiture of the charter, as set forth in the bill, by act of the Legislature, and by non-compliance with the terms of redemption, as set forth in the act, the stockholders become released from all liability under the charter. We refer to 14 Stats. at Large, p. 212. The first step in that argument is, that the liability of the stockholders to the creditors of the bank, if it exists, or if it ever existed, is secondary, not primary. What is secondary liability? The argument of the counsel for the plaintiff is, that if a liability is original, if it is direct, and if it is immediate, then it is not secondary. We are using the term secondary, not in reference to *time*, but in reference to the liability of an indorser, surety, or guarantor. Is not the surety on a note or bond liable, as soon as the note or bond becomes due, and is not paid? He is originally, immediately, and directly liable, but notwithstanding that, his liability on the note or bond would be *secondary;* that is to say, he happens in this position, if he is made to pay, he then has recourse upon some one else to repay him; if the indorser is made to pay, he can sue the principal and recover the debt; the same way with the surety or guarantor. Another fixed rule of law in regard to the nature of a liability, is, that if one is primarily liable, or the principal, if he have a good defense, and can prove payment of the debt, in such a case it relieves the one secondarily liable. Suppose the maker of a note has paid it, is not that a defense for the indorser? If by any transactions or act between the parties, or by law, the note is extinguished as to the maker, it is extinguished as to the indorser; in the same way the surety on a note, or the surety on a bond, is released. If the debt be extinguished by any act whatever as to the principal, it is extinguished as to the surety. All the cases refer simply to making the stockholders liable primarily as to *time*. In those cases, your honor will find that where they use the words "primarily liable," they refer to a matter of *time;* that is, that it was not incumbent upon the creditors first to sue the corporation, and having failed to make the money out of the corporation, then to sue the stockholders, but that they might primarily as to time sue the stockholders first without having sued the corporation. Now, in the case, 1 (Mason?) 343, the act there provides that the creditors of a bank should have their action of debt against any of the stockholders, provided, in case the stockholders divided out the assets or the bank failed or refused to pay the bills, those stockholders should at all times be liable to the holders of the bills. What can be more explicit? If the stockholders shall divide out the assets and the bank fail to pay the bills, or refuse to pay the bills at any time, then the stockholders should be liable to the holders of the bills; yet even in this case, although the court does use the term, and say that these stockholders are originally and primarily liable to the billholders, even in this case, in law, as we use the term, their liability was secondary; that is, having responded to the action of debt provided by the statute, they would have recourse upon the bank itself to refund them the loss which they had sustained. In the case of Corning & Horner *v.* McCullough, 1 N. Y., 47, which is said to be a leading case, the statute of limitations in reference to the penalty was pleaded. This was not a bank case, but simply a case where the stockholders were made liable by statute for all the debts of a corporation in express terms under what is called the corporation act of New York. Of course, where the statute says that they should be liable in an action of debt at the suit of the creditors, there was an original liability, the creditors could sue without having first to have recourse upon the corporation. The case in 7 Barb., p. 279, is also not a bank case, but a corporation in New York, under the general incorporating act. And the case of Morse *v.* Averill is the same. That act which is referred to in all of these cases provides expressly that the stockholders should be liable as if they were in their individual capacity, and as if not incorporated. His honor, in that last case, uses these words: "The privilege of exemption from personal liability, which is usual in corporations, has been expressly denied to the stockhalders of these corporations by statute." Of course, if you would refer simply to the act of partnership without having been released from individual liability, it follows ordinarily from the acts of incorporation that they must be liable in an action brought originally against them; but that does not make them primarily liable, except in point of time, and they would have recourse against any of these corporations in New York, under that act. This is no authority for our case. His honor further said, that "although the Legislature might have shielded them from personal liabilities, as usual in such corporations, yet it has been expressly denied to them, just as if the act of incorporation had never been passed." Of course, any case decided upon that general incorporation act of New York, can have no applicability whatever, either to the question of primary or secondary liability, or to the case now before the court for consideration. The case in 2 Wendell, p. 327, is on the same ground. That was a case where the act of incorporation rendered the stockholders expressly liable. In the language of his honor upon the appeal, "the act of incorporation put the stockholders upon the same footing of liability as if they had not been incorporated." A case is found in 8 Georgia, p. 68, another in 11 Georgia, 459, and another in 19 Georgia, 337. In those the court decided most positively that the liability of a stockholder was not primary, but, on the contrary, the court speak of it as being the ultimate liability. In other cases where those same parties have come before the same court, and the question has been raised, the courts of Georgia have uniformly, in every single case, decided that the liability of the stockholders of the banks was secondary and not primary. The case of Hoge *v.* Burrows, decided in the United States Circuit Court for the southern district of Georgia, in December, 1870, (and the same decision was made in the case of Scott *v.* Telfair,) is no authority in our case. On reading that decree one would be almost led to express astonishment that the point should have been made. The act of incorporation provides, (I am reading from the opinion of his honor,) "By act of incorporation it was provided that the personal property of the stockholders should *at all times* be liable, pledged, and bound for the redemption of the bills or notes at *any time issued,* in proportion to the number of shares that each individual might hold and possess." Now, the point raised there was, whether the stockholders could be held liable *before* the bank was exhausted. The very terms of the act in this case (the act of incorporation of the Planters' Bank,) is different from those of other banks, namely, that the personal property of the stockholders should *at all times* be liable. How could there be a doubt upon that liability? "At all times liable?" the language seems to import with great clearness and force primary liability as to time, it providing that the personal property of the stockholders are at *all times* liable, pledged, and bound for the redemption of the bills of the bank. We are referred to three cases decided by the Supreme Court of Georgia, which, it is said, have a different construction. In reference to the first two cases, the language in the charter is not the same in words or substance as the one under consideration in this case. The charter provides that the stockholders should be liable for the redemption of the bills. Then he says that the Supreme Court of Georgia, in 40 Georgia, 391, does decide the point precisely the same, that the stockholders are not primarily liable. Although I must say it was rather a difficult matter to go over the words of the act, the Supreme Court of Georgia takes the ground that the stockholders are not to be held liable in the first instance, that is, primarily in point of time. I would call your honor's attention to the decision of the United States Court now under appeal, (of Judge W. B. Woods,) that they are primarily liable. He refers to suits against them before the bank was exhausted. The stockholders of the bank are, by the charter, declared to be personally liable, as they were bound for the payment of the bills of the bank—without suit against the bank—to the different creditors holding the bills in proportion to the stock by them owned. The stockholders are no more or less than guarantors or securities for the payment of the bills of the bank. They are the sureties, and liable to be sued separately, without first suing the bank, just as the stockholders of the Columbus Bank may be sued under the charter. This is the whole extent of their liability. Your honor will see that the case cited does not touch the question; it does not follow because one may be sued in the first place, that he does not occupy the position of secondary liability; does not occupy the position with some other one who is primarily liable in point of law.

If there is an extinction of the debt of the one primarily liable, then the secondary liability is extinguished also. In this section of the Exchange ~~Commercial~~ Bank act the stockholders are not made liable primarily, even in point of time, for it is *in case of failure*. For instance, if while the bank was in operation it had refused to redeem its bills, the billholder could not have had an action against the stockholder; there is nothing whatever (supposing the section to be made for the benefit of the billholder) to give him the right of action against the stockholder until the failure of the bank; not the failure of the bank to pay, but the failure of the bank in the sense of insolvency or bankruptcy. I shall cite authorities directly upon the point, that while the stockholders are made liable for the debts of the bank, their liability is simply secondary, and if the debt against the bank is extinguished it becomes extinguished as to them also.

We claim in this case that the corporation has been dissolved, and following from that, that all the debts owed by the bank have become extinguished.

The common-law rule is, that the "*dissolution* of a corporation extinguishes all debts owing by that corporation."

The "dissolution of a corporation" is the term for the civil death of a corporation. It may be effected by—

First. Forfeiture of charter.

Second. Repeal of charter.

Third. Annulling of charter.

Fourth. Judicial forfeiture.

Fifth. Expiration of charter.

Sixth. Surrender of charter.

Seventh. Failure to elect officers: This in South Carolina is guarded against by express provisions. (8 Stats. at Large, 19.)

The common-law rule makes no distinction as to the *mode* or *cause* of dissolution, the same effect resulting in every case.

Kent, vol. 2, p. 305, gives, as the first mode by which a corporation may be dissolved, "by statute."

The common-law rule operates, unless there is some statutory provision, either general or special, preventing, modifying, or restricting its operation.

Most States have a general act, and others provide in the charters or in subsequent acts.

In the act of 1869, there is no provision to continue the liability of the stockholders or debts *owing by the bank.*

Now, does the act of 1869 (14 Stats., 212,) work a dissolution of the corporation?

A reading of the act shows that it—

1st. Works a forfeiture of charter.

2d. It annuls the charter.

3d. It repeals the charter—all, unless the bank does certain acts before certain times limited, all which the complaint (p. 4) states the bank has failed to do.

The language is too plain to be misunderstood: "shall *forfeit all corporate rights and privileges.*" No stronger language could have been used than this.

Do what? "*Forfeit.*"

Forfeit what? "Rights and privileges."

What rights and privileges? "*Corporate.*"

Which of the corporate rights and privileges? "*All.*"

But the banks may go on, and at least wind up their business? No! they "are forbidden to transact *any* business as banking institutions."

Now, when a corporation is dissolved, the assets belong to the king. If a dissolution was effected, the Legislature ought to have provided for the custody of the assets to be used for the State or for the benefit of creditors. Sections

2 and 3 do this, providing a receiver, and prescribing his duty.

In section 5 the act speaks of "*charters* being *redeemed*, and twice of the banks being "*rechartered.*" Both these expressions imply a *loss of charter*.

Then comes section 6, and repeals "all acts or parts of acts inconsistent" therewith. What becomes of the acts chartering the ~~Commercial~~ Exchange Bank? The only possible answer is, *repealed*.

The Legislature might have continued the liability of the stockholders, or it might have made special provision for billholders, or it might (as in Robinson *v.* Lane, 19 Ga., bottom of page 350) have provided for "the bank in its *corporate name* to collect and *pay its debts*;" but it has not done so.

The powers given to the receiver are very few and limited. He is simply to "take charge of the property and assets of the bank," furnish a full statement of the same, and "proceed to the final settlement of the accounts of the bank, in conformity to such rules as the Circuit Court may direct." From this it would appear that the State has made no provision other than the exercising the common-law right of the king. Equity might compel the application of assets for the benefit of creditors. No right of action is given against the receiver; no provision for him to sue and be sued. [~~In this case it appears from the complaint that leave of the court was asked before the plaintiff would venture suit against the receiver; and how formal a party he is, is evidenced by his attorney being one of the attorneys for the plaintiff.~~] The receiver is given the power to represent the bank, in no particular, by suit or otherwise. He is simply made the custodian of the property and assets. We have to this extent examined into the office of receiver under the act of 1869, not because any idea that has been entertained of that office would materially affect our case, but to show how completely the provisions of the act in this respect tally with carrying out the common-law rule. The Legislature has not provided for creditors, although usual so to do. (A. & A. on Corp., sec. 779.)

Equity will, however, compel the State, and all persons having *assets* of the bank, to apply the same for the benefit of the billholders and other creditors. This is what is decided, and nothing more, in Bacon *v.* Robertson, 18 How., U. S., 486, and in Curran *v.* State of Arkansas, 15 How., U. S., 312, and in the note to 2 Kent, 307, where he says that "the rule of the common law [that the State shall take all the assets and keep them from the creditors] has in fact become obsolete and odious." In that respect I call your honors' attention to the fact that Chancellor Kent has been misrepresented by the dissenting judge in the case in 26 Georgia. Kent mentions the rule that, upon the dissolution of a corporation, all the debts of the corporation become extinguished, without comment, and states that to be the law; but then he goes on to say, in the event of the dissolution of the corporation, all its property reverts to the king, and, in the United States, to the people; *there* he makes a note, and *there* he says that *this* common-law rule is odious and has become obsolete, and shows how it has become obsolete; he goes over the statutes of the different States, in which they have all made provision, in the event of the dissolution of a corporation, that the assets are not to be appropriated by the State, but they are to be used for the benefit of the creditors of the corporation; but in no place does Chancellor Kent say, as to the rule, that upon the dissolution of a corporatton the debts by or to it become extinguished, that it is odious or obsolete.

The act of 1869 effects the dissolution of the corporation by its own operation. If so and so are not done "all corporate rights and privileges" are "forfeited." How is it to be known that "so and so" have not been done? The Comptroller General is to inform the judge, and *his information is final.* Then the judge appoints the receiver. In our case (bottom of p. 4, complaint) all this has been *formally* done, the *Attorney General* representing the State. As far, then, as the act requires or authorizes the *forfeiture* has *been judicially declared*, not *adjudged*, for the act *enacts* this, and operates *proprio vigore*. It is seriously contended that, in addition to the act of 1869, judicial determination is necessary. We would announce these several propositions:

1st. The Legislature has the right and power to make an absolute and immediate repeal. I refer your honors to A. & A. on Corp., sec. 766. "In England it has been much questioned whether a municipal corporation could be dissolved, except by the death of all the people in the place, or, it may be, by act of Parliament;" it gives a reason: it is evident the objection applies with less force to private corporations, many of which, in our own country, are little more than limited partnerships, every member exercising, through his vote, an immediate control over the interests of the body. In England a corporation may, at least to all practical purposes, be dissolved, 1st, *by act of Parliament;* 2d, by the loss of all its members, or of an integral part, by death or otherwise; and, 3d, by forfeiture of its charter through negligence or abuse of the privileges conferred by it. By the theory of the British Constitution, Parliament is omnipotent, and, hence, an act of that body would undoubtedly be effectual to the dissolution of a corporation. Now, the powers of the British Parliament have been declared by the first authorities to be vested in our State Legislatures. It is hardly necessary to refer your honors to authorities upon that point, but Cooley, on pages 87 and 88 of his work on Constitutional Limitations, gives the opinions of the most learned judges of our country, some of whom are for strict construction, that the Legislatures of the several States are as omnipotent as the English Parliament, save where they are restricted by the provisions of the Constitutions of the respective States and by the Constitution of the United States. It follows, then, that the Legislature of South Carolina had the power to make an absolute and immediate repeal of the charter of the Commercial Bank. Besides, this power is expressly given to the Legislature by section 41, of the act of 1841. (11 Stats. at Large of So. Ca., p. 168.) Angell & Ames go on to say, that this absolute repeal of the charter would in most cases come in conflict with that clause of the Constitution of the United States which provides that no State shall pass any law impairing the obligations of contracts. Next: in consequence of the construction which has been put upon the clause of the Constitution just quoted, it has become usual for Legislatures in acts of incorporation for private purposes either to make the duration of the charter conditional, or to reserve to themselves a power to alter, modify, or repeal the charter at their pleasure; and as the power of modification or repeal is thus made a qualifying part of the grant of franchises, the exercise of that power cannot, of course, impair the obligation of the grant. Such alterations or modifications are to be made in accordance with the forms prescribed by the Constitution, which is in force when the alterations are made, and not according to the forms prescribed at the time the charter was granted. Again: when such a power is reserved a creditor of the corporation cannot interpose a valid objection to the constitutional power of the Legislature to repeal the charter, on the ground that such an act would prevent the prosecution of a pending suit by him brought against the corporation in which the property has been attached. Sometimes the power of repeal is reserved to be exercised only in certain contingencies; as "if the said corporation shall fail to go into operation, or shall abuse or misuse their privileges under this charter." It would seem that in such a case the corporation could not, in defense to a *quo warranto*, impeach the repeal of the charter on the ground that there has been no abuse or misuse of their privileges, but are forever concluded and estopped by the decision of the Legislature, manifested by the act of repeal. It then goes on to state how, by the death of all its members, a corporation may be dissolved; also by the loss of one of its integral parts; another mode, by the surrender of its franchises, and there is a *distinct* mode of the dissolution of a corporation, *distinct from the repeal* of a charter, the forfeiture of the charter, judicially ascertained and declared.

Section 777 of A. & A. on Corp. says, *a cause* of forfeiture cannot be taken advantage of, or enforced against a corporation, collaterally or incidentally, or in any other mode than by a direct proceeding for that purpose against the corporation, so that it may have an opportunity to answer. It goes on to say in the next section, (A. & A. on Corp., sec. 778,) "the mode of proceeding against a corporation to enforce a repeal of the charter, or dissolution of the body for the cause of forfeiture, is by "*scire facias*," or an information in the nature of a *quo warranto*." Now, then, as I have said before, the Legislature has the power to make an absolute and immediate repeal.

2d. It may by words dispense with judicial determination; it may do so by implication; it may enact words of forfeiture other than judicial adjudication; it may declare the forfeiture has already existed, but with the privilege of the same being removed by the performance of certain conditions; all these propositions are corollaries to the power of the Legislature in cases where it is not restricted by its Constitution or that of the United States. The condition of forfeiture placed upon the defendants from a failure to do certain things without a mode provided how the compliance or non-compliance is to be ascertained, would necessitate judicial determination. It is in such a case that judicial determination has been decided to be necessary; that is, where the Legislature has failed to provide how the non-compliance is to be ascertained.

Your honors will observe that you will find in some of the cases referred to, that where the Legislatures have provisions in their constitutions, which say that acts of forfeiture shall be judicially ascertained, the courts have decided that that provision was carried out where the Legislature, after reciting that inasmuch as a committee of itself had investigated the matter, and had ascertained that a cause of forfeiture did exist, therefore *enacted the forfeiture*. Where the act of the Legislature provides, that if a bank fails to pay out its bills, or fails to redeem its bills, or fails to make a return in such a manner, it shall forfeit its charter; then it requires judicial determination, then it declares what is *cause* of forfeiture, and leaves it to the court afterwards to decide whether that cause of forfeiture existed. It cannot be said that the act of 1869 announces a *cause* of forfeiture, for the non-payment of its bills has always been a cause of forfeiture. The object, then, of the act of 1869 is not to declare what shall be a cause of forfeiture, and then leave it to judicial determination to ascertain whether that cause of forfeiture existed. The act declares that on account of the failure of the banks, they are already dead; that they will be so considered, unless they claim and express a desire to be "rechartered" by agreeing to redeem their bills. In such a case, they are to be "rechartered," if they have a capital of fifty thousand dollars. The act enforces *sentence* on a particular day. The language of the Legislature to the banks is this: You have by your conduct incurred the penalty of forfeiture; if you do not commence and redeem your bills by the first of December, we will *now pronounce sentence* on you; if you do redeem your bills, we will not leave your charters repealed, but will "recharter" you with a capital not less than fifty thousand dollars; then we will allow you to "redeem" your charters *which you have forfeited*. It is a proclamation of amnesty on certain conditions, and pronounces judgment to take effect on the first day of December, if those conditions are not performed. My construction, then, of the act is, that it does not state indefinitely what shall be the cause of forfeiture, and failing to provide a mode in which that cause of forfeiture shall be ascertained to have taken place, necessarily leaves judicial determination to ascertain whether it has; but it pronounces sentence of forfeiture to take effect on the first day of December. The condition of the banks at that time is referred to; that they were individually dead; that they were not doing business; that they had failed to comply with their corporate privileges, by refusing to pay their bills of credit; that they were failing to comply with the act; all which being the case, they have forfeited their charters, and we, the Legislature, do not leave it to judicial determination to decide this matter, we do *ourselves so pronounce*, and we provide, that if this state of things continues on the first day of December, that then you shall forfeit your corporate rights and privileges, and are forbidden to transact any business as banking institutions.

Now, may it please your honors, notice the peculiarity which is in this provision: not that if the banks fail to pay their bills they shall forfeit their charters, but, if this state of things, which we now by legislative determination say does exist, continues to exist on the first day of December, then your corporate rights and privileges are forfeited. Now, what is left for judicial determination? The Legislature itself *declares it exists;* it says, if this state of things continues up to the first of December, then you have forfeited all your corporate rights and privileges. It is not left for judicial determination to ascertain that fact. How are the banks to respond that they have not forfeited their corporate rights and privileges? Are they to answer to a *quo warranto?* No; all they have to do is simply "to agree to redeem their bills," or to announce to the Comptroller General that they agree to redeem their bills. If they are *silent* and fail so to do, then this sentence, which the Legislature passed upon them, takes effect; and on the first day of December goes into operation, without any judicial determination. The act *so provides*, so recognizes the state of things. But if they simply say to the Comptroller General, we do agree to redeem our bills, then the *sentence* of the Legislature is suspended. If, after saying so—that they do agree to redeem their bills—they then went on and afterwards failed in their duty of so doing, it would require judicial determination to forfeit the charter. The mode which the Legislature has provided in this case for ascertaining whether that state of things exists upon which is predicated the forfeiture of all the rights and privileges of the banks, does not leave the matter unprovided for, but ☞ it is to be ascertained by the Comptroller General. How is he to ascertain it? Why, by the failure of the banks to inform him that they agree to redeem; if they fail to give him that notice, then that state of things, upon which the Legislature passed sentence of forfeiture, by its omnipotent power, exists, and, so far as the corporation is concerned, the *sentence goes into effect;* "the Comptroller General shall then inform the judge of the circuit in which the said bank or banks may be situated of each and every bank failing to comply with the requirements." Then it is the duty of the judge, thereupon, to appoint a suitable person as a receiver of each of the said banks, who, after filing a bond, is to take charge of the property and assets of the said bank or banks.

Now, your honors, every matter that is left, that could possibly be the subject of judicial determination under this act, is determined upon *by the judge.* If the banks fail to satisfy the first section of the act, which is to be ascertained by the Comptroller General, by his not having the requisite promise made to him, then the judge is to appoint a receiver. The appointment of a receiver and the forfeiture of the corporate rights and privileges both are predicated upon the *same state of things.*

It was perfectly easy for the banks to appear and say you have no right to appoint a receiver, for we have not failed to satisfy the requirements of the act of 1869. They were informed by the State, by an act of the Legislature, that such an application would be made to the judge of that circuit in which each bank was situated upon the Comptroller General informing him that the banks had failed to redeem their bills. Now, is not this the proper construction of the act, and is not this warranted by the act?

The construction we contend for is, that the act itself pronounces the sentence of forfeiture, and that sentence is to go into effect upon the first day of December, leaving nothing for judicial determination, except to receive the information prescribed and the appointment of a receiver thereupon. The distinction we make is plainly taken by this court in Bank *v.* Bank, 14 Wallace, p. 399, and First National Bank of Selma *v.* Colby, 21 Wallace, 609.

Here we would ask, what would be determined by judicial determination? Does not the act make the report of the

Comptroller General final? Does not *the act* say, that by doing what you have done you have violated all your corporate privileges? You have caused such a state of things to exist as to authorize a forfeiture of your charter? What *issue* could they possibly make before the judge? Could they take issue with the Legislature? Could a *quo warranto* have been issued? A *quo warranto* is only to be issued when a person *claims* to exercise a power which he is not authorized to exercise by law. The inquiry is, whether the corporation has forfeited its charter. But in the state of things as pointed out here, by the act, (and which the complaint says existed,) where is any body that claims to exercise the corporate rights of the Commercial Bank? The courts have decided, and your honors will find it in one of those sections in Angell & Ames, that the court never undertakes to decide upon a question of *existence*, but upon a question of forfeiture; therefore, when the case we contend for shows the non-existence of the corporation, the *quo warranto* is unnecessary.

Your honors will notice in reference to the authorities which may be cited from Wendell, that all of them are under the 38th section of the Revised Statutes of New York, where it is enacted, that no corporation can be dissolved until its dissolution is declared in some proceeding instituted for that purpose. On that same section the courts have held that the charter is absolutely void if it had been revoked; thus, process of *quo warranto* would be unnecessary, for a void charter can afford no justification for any one acting under it. The process is also unnecessary where a corporation is absolutely dissolved by the loss of an integral part; so that the writ of *quo warranto* is only to be used where there is some one who claims to exercise the power; but here, according to the statement of the claimant, a state of things which is pointed out by the act continues to exist, the banks do not even come forward and agree to redeem their bills.

Now, is this a correct view of the act of 1869, namely, that it pronounces sentence; that it does not say what may be the penalty in case so and so is not done by the banks;

but that is has pronounced sentence, as to them, to be carried out by the remaining sections. Counsel say, what we claim the act to mean, that the Legislature pronounced sentence and left nothing to be determined by judicial determination. Any bank redeeming its bills in conformity with the provisions of the second section, and able after so doing to have in its possession assets of the marketable value of fifty thousand dollars, might resume business, as a banking institution, after satisfying the Comptroller General that it was possessed of the said amount. No notice being given by such bank would imply that it had ceased business, though it might resume business by complying with certain conditions. The position we have taken is, that the bank charter is already void, the bank already dead. By section 5, a bank resuming business in accordance with the provisions of this act, shall report to the Comptrolter General, and their charter shall be admitted as "*redeemed.*" What does that mean? Does it not mean that when it is pronounced by this act that all the bank charters are already forfeited and gone, they are already forfeited and gone? If, however, says the Legislature to the banks, by the first of December you will renew business in the manner prescribed we will then remove the sentence. That they are in a position to have their charters restored is an announcement that their charters have already gone from them.

The Legislature is willing, however, to waive that condition of things, and recharter them, or allow them to redeem the charters which have already been lost. Now, how unmeaning would be that language if it required any judicial determination—if the Legislature had not itself decided the matter. How could they redeem what was not already lost? The term redemption is there used exactly as it is used in general, to bring back that which is lost and gone. Is that lost and gone which requires judicial determination to ascertain whether it is lost? With what propriety could the term redemption be used? Their charters are to be "redeemed" if the required amount is advertised by the Comptroller General. If that is not done, it is provided that no bank shall be rechartered. In the name of common sense, how can a bank be *rechartered* which still has a charter: What sense would there be in that? What meaning could be given to that language? "Redeem" would be difficult to get over; but here comes "recharter." Those banks which simply promise to redeem their bills and satify the Comptroller General that they have fifty thousand dollars of assets shall be deemed to have redeemed their charters, which had gone from them without judicial determination, but by the sentence of the Legislature. They are to be "rechartered." What is rechartering a bank? How can a bank be rechartered which still has a charter? If it went on to say that they were to be rechartered for twenty-one or fifty years from date, it would be an entirely different matter; and to show that that word was not used without proper consideration, it goes on to say, in the very same section, "*Provided*, That all banks chartered under this act shall be liable to taxation."

There is another section which *has not been touched upon*. What is the meaning of section 6, when it says "all acts or parts of acts * * * the same are hereby repealed?" It means this: that ordinarily, where a corporation has done an act, or failed to do an act, which would be the cause of judicial determination, that judicial determination would be necessary. But where the Legislature itself has decided upon it, and pronounced sentence upon it, then another mode is necessary; the *first mode* pointed out by Kent, the *first mode* by Angell & Ames, and the *first mode* by Cooley to wit, *the repeal* of the charter of a bank. It says, that "all acts or parts of acts inconsistent with this act, the same are hereby repealed." Does not that repeal the charter of the Exchange ~~Commercial~~ Bank, if the Exchange ~~Commercial~~ Bank was one of those banks of which the Legislature said "they have all along been violating their corporate privileges, and, if they so continue, sentence of forfeiture shall be passed?" And sentence is passed on the first day of December; but the repeal of the act chartering, being the manner in which the charter is taken away, it is repealed. But if any bank complies with the requirements demanded, then the act, so far as its charter is concerned, is not repealed. If we simply give the act the construction contended for by the Attorney General, that the Legislature provided *a cause* of forfeiture, and that a judicial determination is necessary to determine whether that cause of forfeiture exists; if this is all the act means, what is the use of that last section regarding repeal? What acts or parts of acts would it be necessary to have repealed? I cannot conceive of any act or part of an act necessary to be repealed; not a single part of an act, giving the construction the Attorney General contends for, that would require to be repealed. Now, if it had said "all acts are modified to comply with this act," then it would have more meaning.

But, it is objected, the title of the act does not express the forfeiture of the charter. The subject of the act is aptly expressed: it is to enable the banks to resume business, and if they fail so to do, to put them in liquidation. How put them in liquidation? Why, by taking away the charter and assets in the mode and manner pointed out. The primary object and desire of the act is not the dissolution of the corporation, but it provides that mode of liquidation if the banks will not resume business. Like in a tax act, the object of the Legislature would be to raise taxes, and the act might be entitled "An act providing for the assessment and taxation of property," yet, to enforce the act, it can provide for the sale of the northeast corner of the tax-payer's land, if he fails to pay the tax. The title does not say anything about the sale of the defaulter's land. Cooley on Constitutional Limitations fully meets this objection, (p. 144, sec. 2, and p. 145, sec. 3.) In reference to the requirements in stating the object, our Constitution is, that every act having the force of law shall relate to one subject, and that shall be expressed in the title. "Subject" is the word. Some of the constitutions say "object" of the act, but here it is "subject" of the act. The subject of this act is banks, the object of the act their interest. The general purpose of these provisions would allow but one general subject, which is clearly indicated in the title. The Legislature must determine for itself how broad and comprehensive shall be the subject of its statute; how much shall be employed in the title in defining it. The subject of this act is embraced in the title. Your honors will notice the words of Cooley, (p. 145;) also, "There has been a general disposition to construe the constitutional provisions liberally, rather than embarrass legislation by a construction whose strictness is unnecessary for the accomplishment of the beneficial purposes for which it has been adopted." We think the authorities dispose summarily of the objections made to the title.+

It may be objected that the act so construed would be repugnant to the Constitution of the United States. On that subject we shall simply cite authorities on the subject that the act is not repugnant to the Constitution of the United States. A. & A. on Corp., sec. 767; Mumma *v.* Potomac Co., 8 Peters, 287; Nevitt *v.* Bank of Port Gibson, 6 Smedes & Marshall, (Miss.,) 513; Commercial Bank *v.* Chambers, 8 Smedes & Marshall, (Miss.,) 9; Matter of Empire City Bank, 18 N. Y., 209. This last is a case where the Legislature by an act imposed a liability upon the stockholders that did not before exist. The court held, however, that, under a provision of their constitution, they had a right so to do, and that it did not impair the obligation of a contract. (Ohio Railroad Company *v.* The State, 29 Ohio, (N. S.,) 573; Read *v.* Frankfort Bank, 23 Maine Reps., 318; Sherman *v.* Smith, 1 Black, U. S. S. C. Reps., pp. 587, 593.) I also refer your honors to the act of 1841, which gives our Legislature the power to repeal or modify the charter of any bank thereafter incorporated or rechartered. (11 Stats., sec. 41, p. 168.)

IV. Again, the charter of the Exchange Bank was surrendered in 1869. So held on exception to special master's report. (Transcript, p. 73, sec. 189.)

The charter being annulled, by repeal or surrender, then follows the result that debts due by the bank are *extinguished.*

+ State v Co Treas 4 Rich N. S. 528
Morton Bliss & Co v Comptr Gen. 4 Rich N. S. 442

Bills are mere debts; and necessarily follows the result, that the stockholders are also released.

It would almost follow, as a result of the legislation of the State allowing a suspension of specie payment, and the paying out of bills of other banks, that, these securities being removed, the liability of the stockholders followed. Had insolvency followed upon the failure to pay specie, no stockholder could have lost even the whole of his stock. But it is a matter of clear decided law. We give some of the multitude of authorities.

A. & A. on Corp., sec. 195.

Upon the dissolution of a corporation, debts due to or from it (in the absence of some statutory provisions to preserve them) become extinguished.

Commercial Bank *v.* Lockwood, 2 Harring, 8. (Del. Sup. Ct., 1835.)
Bank of Mississippi *v.* Wren, 3 Smedes & M. 791.
Coml. Bank of Natchez *v.* Chambers, 8 Smedes & M., 9.
Renick *v.* Bank of West Union, 13 Ohio, 298.

Under a provision in an act of incorporation, "that the private property of the individual stockholders shall be liable for the debts, contracts, and liabilities of the coporation:" Held, that the responsibility imposed upon the stockholders was secondary; and that, when the debts against the corporation became extinct by the expiration of its charter, the liability of the individual stockholders was extinguished also.

Malloy *v.* Mallet, 6 Jones, Eq., 345, (No. Ca. Sup. Ct. 1863.)
Fox *v.* Horah, 1 Ired. Eq., 358.
Wintry *v.* Webb, 3 De., 27.

"The dissolution of a corporation by an act of the Legislature deprives it of its corporate existence, and no legal judgment can be rendered against it subsequent to that time. Therefore, where a judgment is rendered against a corporation, after its dissolution, and execution levied upon the property of an individual as a stockholder, he is a privy to the judgment and may maintain a writ of error in his own name, without joining his co-stockholders to reverse it." And it was reversed.

Merrill *v.* Suffolk Bank, 31 Me. 57.

Dissolution as resulting from expiration of ☞charter.

Thornton *v.* Lane, 11 Ga., 491, and 26 Ga., 31, 32, 32, 34, 36, 37, 38, 42, 44, 45, 46, 49, 50, 52, 54, 55, 56, 62, 64, 65, 70, 73, 74, 76, 97, 98, 102, 105.

Kent says, (2 Kent, 305 :) "A corporation may be dissolved by statute, etc., etc., etc." 307 : "According to the old settled law of the land, where there is no special statute provision to the contrary, upon the civil death of a corporation * * * * the debts due to and from the corporation are extinguished. Neither the stockholders * * * * can recover these debts nor be charged with them, etc." He goes on on the next page to say that all the property vests in the people as successors of the crown, at common law, and right here has his note, in which he says this last rule is odious. The doctrine contended for is admitted in the United States Supreme Court, in Curran *v.* State of Arkansas, 15 How., 312, 313 ; and in Bacon *v.* Robertson, 18 How., 487, which authorities go on to show that, notwithstanding this rule, the *property and assets* of the corporations in these cases are not to be appropriated to the State or others who have no equitable right thereto.

A. & A. on Corp., sec. 779, p. 823.

This rule of common law, and legislation of like nature, are called *odious*. Kent does not call the rule that all debts due to and by the corporations are extinguished by its dissolution, *odious*, but the rule that in such case the State should, without consideration, appropriate to itself all the assets in fraud of the creditors of the corporation. (2 Kent, 307, note.) I grant that generally the term is appropriate ; but not in this case. Billholders have been put on their guard since 1857, by suspension being legalized. No present billholder has, except in an almost miraculously chance case, paid more than a small per cent. for his bills. The public financial thermometer has long stood at a low degree. The daily quotations show an accurate adjustment of market value of the bills of the several banks to the *assets owned by these banks*, without regard to any recourse on the stockholder. He has lost all his stock. The war devastated the country; slaves were emancipated; Treasury agents seized wagons, horses, mules, and even scrap iron; and now comes the speculator, and buys up at a low figure these depreciated bills, and endeavors to take the last crumb from the old men, women, and children of Georgia, North and South Carolina. This legislation is *humane*, not odious. The operation of the common law is, in this case, the most enlightened humanity, and not odious.

4. Again, during the pending of this suit, and before argument, (see suggestion,) the charter of the bank had expired by its own limitation. From this follows, (*supra*,) the extinction of all the debts of the bank, and the consequent extinguishment of the secondary liability of the stockholders. Many cases might be cited, but this court has recognized the doctrine in *First National Bank of Selma* v. *Colby*, 21 Wallace, 609.

5. There are some special points relating to particular defendants. It is decided by the Circuit Court that the bank failed in February, 1865. (Transcript, p. 79.)

Now, although the executors of Wallace divided out the estate of their testator in conformity to the will, and transferred testator's stock in the Exchange Bank to trustees of other parties in 1863, (more than twelve months before February, 1865,) yet the decree holds the executors liable.

In the case of the executor of Arthur, there is *no proof* of the testator holding any shares later than 1st December, 1862.

And besides this, these executors are "adjudged to be liable for said stock as are holders of said stock in their own right." This is remarkable. The executors *individually* liable, because they did not plead *plene administravit.* They are made liable for stock held at a time when their testators would not have been liable; and what is more, they are liable, not in their capacity as executors, but individually. This last position is clearly against the authorities of South Carolina and this court.

Ford v. *Adm'r of Rouse*, Rice's Law, 223.
Young v. *Kennedy*, 2 McMull., 80.
Boyce's Ex'rs *v.* Grundy, 9 Peters, 288.

6. Again, while this is an equity suit, there has been no consideration of the rights of the defendants, *inter sese.* While the amount in judgment *for the plaintiffs* is about $52,000, the judgment *against the defendants* amounts to more than $150,000; and the plaintiffs can collect nearly the whole of their judgment against one of the defendants. In such case no provision is made for that defendant to recover contribution from his co-defendants.

Again, no proper adjustment is made where the defendant has already redeemed bills. In such cases, by the decree, judgment is given against that defendant for twice the amount of the stock held by him, and judgment is given generally for that defendant for the amount of the bills proven as redeemed by him. We submit that the *least favorable* decree ought to have been a judgment against the defendants simply for the excess of their liability over the bills redeemed; and that a proper equitable decree ought to be arrived at as follows: Make a computation of all the bills proven by plaintiffs and defendants; then, of the sum equal to double the amount of stock held by all the defendants; then estimate the separate liability of each defendant, as being that portion of all the bills proven which double the amount of his stock is of double all the stock held by all the defendants; and then give him credit for the bills proven by him, and render a decree against him for the balance only.

W. W. Boyce,
Appellants' Counsel.

Supreme Court of the United States.

OCTOBER TERM, 1875.

JAMES P. CARROLL *et al.*, Appellants,
vs.
JOSHUA & THOMAS GREEN, Appellees.
No. 216.

SUPPLEMENTAL BRIEF.

ADDITIONAL ASSIGNMENT OF ERRORS.

1. The decree of the Circuit Court does not decide at what time the failure of the bank, because of which a liability is alleged on the part of the plaintiffs in error to the defendants in error, took place; and any decree affirming the liability of the plaintiffs in error under the charter of the said bank, without fixing the time of such failure of the said bank, must be set aside. The time of the failure of the bank fixes the persons who are liable, if any, because of that failure.

2. The appellees, in their bill of complaint, charged that the Exchange Bank failed on the 1st of December, 1862, and indeed at an earlier period, and prayed a decree against appellants, as stockholders, for shares held on the 1st of December, 1862, or within twelve months previous thereto,

and the 22d of December, 1869; that, under the charter of the said bank, such liability, if any does exist, is as to those who were stockholders at the time of such failure, or within twelve months previous thereto, and does not affect those who became or were stockholders subsequent to the time of such alleged failure of the said bank.

3. The appellees, complainants in the bill of complaint, alleged and charged that "the said Exchange Bank, some time previous to the 1st day of December, 1862, failed to pay their bills of credit known as bank bills, and continued so to fail to pay their bills of credit up to the 1st of December, 1869." That the appellants, defendants in the said bill of complaint, did thereto plead "that the cause of action stated in the said bill did not accrue within four years before the exhibiting the said bill." And the decree in the court below should have been for the plaintiffs in error upon the said plea.

4. The appellees, complainants in the bill of complaint, alleged and charged "that on the 1st day of December, 1862, and indeed at an earlier period, the said Exchange Bank of Columbia had failed, being then indebted to an amount far exceeding its assets; "that the appellants, defendants in the said bill of complaint, did thereto plead "that the cause of action stated in the said bill did not accrue within four years before the exhibiting the said bill." And the decree in the court below should have been for the plaintiffs in error upon the said plea.

5. That the cause of action stated in the said bill of complaint did not accrue within four years before the filing of the said bill of complaint.

6. That the decree made in the case ordered judgments to be entered against the defendants, severally, for the extreme amount of the liability alleged to be imposed under the charter upon the defendants, if they were liable at all; when the whole amount claimed was greatly less than the

amounts of the judgments so ordered to be entered, and when, if any liability under the charter could be imposed on the defendants, such liability, if it did exist, was a liability of each stockholder for his ratable proportion of the sum total of that indebtedness of the bank which is to be borne by the shareholders.

W. W. Boyce,
Counsel for Appellants.

IN THE SUPREME COURT.

J. P. CARROLL AND OTHERS,
Appellants,

vs.

J. & T. GREEN,
Appellees.

BRIEF OF A. G. MAGRATH,
For Appellants.

CHARLESTON, S. C.:
WALKER, EVANS & COGSWELL, PRINTERS,
Nos. 3 Broad and 109 East Bay Streets.
1876.

IN THE SUPREME COURT.

JAMES P. CARROLL, ET AL.,

vs.

JOSHUA AND THOMAS GREEN.

BRIEF OF A. G. MAGRATH—For Appellants.

1. What is the nature and extent of the liability imposed by the section of the Bank Charter, the construction of which is before the Court?
2. According to that construction, are the defendants liable?
3. If liable, are they liable to the plaintiffs? 1

In the opinion of some the section imposes a penalty; if the Court shall adopt that view, nothing here will be added to the argument which sustains it.

In the opinion of others, the expiration of the Charter extinguishes the liability; if that shall be the opinion of the Court, this Brief will not be required.

But a third view of the question presents it in the nature of a contract. To that view of the question, this argument will be addressed.

In the consideration of the question as a liability arising 2
out of a contract, the first inquiry which arises is, because of what; and for what purpose or end; was this supposed contract intended to be created?

Two reasons are at once apparent; to secure the solvency of Banks, so far as their circulation, a matter of general and public interest, is concerned; next, to protect the indi-

vidual person, who, trusting to the solvency of the Bank, took its bill as so much money. And this personal protection to the billholder, if the section does create a liability
3 of the stockholder, embraces also the case of the depositor.

The words are general "in case of failure," "each stockholder," "shall be liable and held bound individually for any sum not exceeding twice the amount of his, her or their shares." The billholder is not preferred, as in some charters, over all other creditors.

If the liability is because of the "failure," it must be for those who, because of that failure, were in the contemplation of the law giver entitled to the protection derived from that liability.

4 The depositor who gave to the bank his money for safe keeping, seemed to have been placed on the same footing with the billholder, who took the bill of the bank as money.

Supposing, therefore, that a liability was intended to be created, in the discussion of the case before the Court, we must, to "comprehend the import of this legislation," "consider the mischief it was designed to prevent and remove; the mode adopted to accomplish the end; for the legislation is of a character wholly remedial." (Bacon *vs.* Robertson, 18 How., R. 480; Van Hook *vs.* Whitlock, 2 Edw. (N. Y.)
5 R. 301. And altogether anomalous in connection with the qualities which belong to a corporation, it must be construed strictly. (Gray *vs.* Coffin, 9 Cush., R. 192.)

Conceding, therefore, the intention of the law-giver to assert a power reserved to impose a liability on the stockholder, the question arises, whether the section of the charter before the Court, without further legislation, gives the plaintiff a right to enforce the liability; or provides a mode in which it can be enforced? Does the section, as it now is, do more
6 than reserve to the law-making department, power if it shall

think fit, to provide, by additional legislation, for the enforcement of this liability; and to do so, by designating the mode in which, and the persons for whom, that liability shall be enforced?

Unlike charters in which such a liability is enforced by legislation, there is not in this charter any particular designation of the parties who shall have the right to enforce it; nor a mode prescribed by which it shall be made available.

No rule of construction is more positively recognized than that in cases where such statutory liability is to be enforced, 7
the intent of the Legislature must be ascertained, for the right understanding of the liability; to ascertain that, the Courts look only to the words of the charter; and this liability is not to be extended by implication. (Lowry *v.* Inman, 46 N. Y. Rep., 120.)

The cases, therefore, in which such a liability is enforced are cases in which the decision of the Courts, that it arose out of contract, rested upon the fact that the persons were designated who should have the right to enforce it. Such was the case of Corning & Horner *v.* McCullough, 1 Com- 8
stock, 47, in which it was held that the liability arose not in the form of an express personal contract, but resulting from implied assent. In that case the charter gave to any person having a demand against the corporation the right to sue any stockholder.

If, as in that case, the alleged contract was complete, having a party to sue and a party to be sued, the rule in Hawthorne *vs.* Calif, 2 Wall. R., 10, of course would apply; and the power that made the law out of which the contract arose, could not repeal the law; because, so to do would impair the obliga- 9
tion of the contract. The right of the creditor to sue was given in Hawthorne *vs.* Calif. It is not so given in the case now before the Court.

It may well be considered that it was prudential legislation to reserve a power to enforce a liability, without putting that reservation in a form by which it should pass beyond the power of the Legislature to modify or control it. To the *intention* of the Legislature we must constantly refer. And it is now submitted that the words in this Charter may be well

10 construed to indicate only an intention to retain a power to
provide for the enforcement of a liability; but not to make that
reservation, vest the absolute right in any individual to enforce
the liability independently of the Legislature, and without
further legislative action. Such a reservation is no more than
the State has exercised and does still exercise over the char-
ter of every corporation which it creates.

In fact, the reservation of a right so extreme as that which
the State possesses, of taking away at any time a charter
which it has granted, could be reconciled only with the im-
11 position of such a liability as is here claimed, by supposing
that it reserved likewise to itself the power to decide whether
the circumstances connected with the management of the
Bank made it proper, in case of its failure, to provide for the
enforcement of this liability.

Compared with other charters in which a liability, such as
is claimed in this case, is found, it will be seen how im-
perfect is this. Yet, to be enforced, it must be perfect in
itself, and in all of its parts. If the enforcement of it re-
quires that there should be more said or done by the law
12 making power than is said or done in the charter, it is not
for a Court to supply the defects. If this or any law is so
imperfect that it cannot be enforced, the power that makes
the law alone can make the work complete.

This liability "is always a creature of Statute." The Stat-
ute which creates it may also declare the purposes of its
creation and provide for the manner of its enforcement. The
intention of the Legislature when properly ascertained must
govern the construction of every Statute. For such purpose
the whole Statute must be examined. (Pollard *vs.* Bailey, 20
13 Wall., R. 520.)

But if this view of the case is not accepted as correct, then
it is proper to consider what is meant by the "failure" of the

Bank; for it is only by deciding what is "failure," within the meaning of the law, that the time can be ascertained which fixes the persons who are to be so liable.

The bill of complaint alleges that the Bank "had failed" on the 1st December, 1862, and "indeed at an earlier period." (Rec. 3.)

T. J. Robertson, in his answer, says the Bank was able to meet its engagements until some time in the year 1865. 14 (Rec. 8.)

J. P. Carroll and M. LaBorde say they do not know, except by the bill of complaint, that the Bank failed the 1st December, 1862. (Rec. 11.)

C. H. Baldwin says he does not know that the Bank failed on the 1st December, 1862. (Rec. 19.)

L. D. Childs says he does not know that the Bank failed on the 1st December, 1862. (Rec. 23.)

P. W. Chick says the Bank was solvent until some time in 1865. (Rec. 33.) 15

W. B. Stanley and others say the Bank had not failed in December, 1862, and was solvent until some time in 1865. (Rec. 38.)

C. H. Baldwin, in his testimony, says that, in November, 1864, no bank here was paying specie. (Rec. 61.)

Mr. Southern says the Bank ceased issuing its bills in 1861 or 1862, when Confederate notes were issued. (Rec. 63.) The Bank paid specie until its suspension was legalized. (Rec. 63.) Has no doubt that the Bank in February, 1865, could meet the whole of its liabilities. (Rec. 63.) He could not 16 fix the time up to which the Bank could meet its liabilities in specie. (Rec. 63.) Could do so up to the time Confederate currency was in general use. (Rec. 63.) If the Bank had been put in liquidation on February 1, 1865, it could have met all its liabilities and redeemed its outstanding bills in specie or its equivalent. (Rec. 63.) The failure of assets were due to the disasters of the war. (Rec. 63.)

L. D. Childs corroborates Mr. Southern's testimony as to the solvency of the Bank in February, 1865. (Rec. 64.) The Referee, in his report, comes to the conclusion that the 17 Exchange Bank became insolvent "sometime during the month of February, A. D. 1865." (Rec. 67.) That "the Bank suspended business about the time of the burning of Columbia," and the Referee reports "February, 1865, as the date of the failure of the Exchange Bank." (Rec. 68.)

The decree of the Court assumes this also as the time of the failure of the Bank; declares certain defendants named to be liable for twice the amount of shares held at that time or within twelve months previous thereto, and orders that the
18 several billholders "respectively have executions against said defendants, stockholders above named, for the said several amounts above stated, and costs." (Rec. 80.)

Surely if the fact is considered, as made out by the Record, that the Bank failed in February, 1865, because after the capture of Columbia it never resumed business; it is at least, as clearly made out, that the "failure" of the Bank, as established by the decree, was, as stated by Mr. Southern, due to "the disasters of the war." (Rec. 63.) Is that a "failure," because of which it was intended that the stockholders were
19 to be liable for twice the amount of the shares held by each at that time or within twelve months previous thereto?

In Chalk *vs.* Patterson, 5 So. Ca. R., 290, the Supreme Court of the State held that the obligations of a State official, controlled by a government holding sway during the war, were to be regarded as the results of an irresistible force. And the same rule was applied by this Court in the case of McLemore *vs.* Louisiana State Bank, October Term, 1875. What other conclusion could be reached? To consider duties created for times of peace, applicable to a state of
20 war, and enforced as if peace had never been broken, is near to mockery. The most stringent of all responsibilities admits the exception of the loss arising from the act of God; and it would be as just to hold one liable for the destruction which the tornado causes, as for the losses which the unchecked passions of men in a state of war produce.

If this Bank then failed because of the war, under no construction which could be given to this section of the charter could the stockholders be made liable.

If the Bank is said to have failed in February, 1865, the cause of that so called failure is also stated.

But is the suspension of a Bank because of a state of war; is the destruction of a Bank by a physical or moral cause of a nature which could not be prevented; that failure, if it can be so called, which was in the contemplation of the Legislature? 21

"Failure," in some of the earlier charters, is used as a synonym with "bankruptcy." (Stat. at L., 1;) (8 Stat. at L., 16.) Then "bankruptcy" is omitted, and "failure" only retained; (8 Stat. 63.) "Failure" is defined "becoming insolvent," "bankruptcy," "suspension of payment." (Webster.) After the suspension of specie payment was legalized, the Bank ceased to pay specie. (Rec. 63.) This suspension is 22 undoubtedly that of 1859. Is a suspension of specie payment a "failure" in the contemplation of the statute?

It is a cause of forfeiture of the charter. It is the abuse of a franchise which the State may condone so far as it is concerned. And it is, to all intents and purpose, a "failure" to redeem its obligations in the only mode known to the law. No Act of the State could prevent the creditor from having a corporation so refusing adjudicated a bankrupt.

It is true, in a general suspension, the mere fact of suspension is not proof of insolvency. 5 Abb., 328; 26 Barb., 23 304. But a suspension which is never relieved, which continues until the Bank is finally closed, cannot be otherwise regarded than as indicating the time of its "failure."

Then we have the Bank suspending, in 1859, payment of its obligations in specie; never resuming such payments; but continuing its transactions in Confederate currency, and finally overborne in the tide of war as it was rolled on by the invasion of General Sherman's army in February, 1865.

Unquestionably the suspension of payment of its obligation was failure; so was the final cessation of all its business 24 transactions. But if the first was not that failure because of which a liability was imposed on stockholders, how can the second be considered a failure for which the same stockholders should be liable?

Is there any reason for the assumption that the Legislature intended that the stockholders of a Bank should be liable to its creditors, because of the bankruptcy of the Bank in consequence of war waged by that State? If in the progress of that war, the assets of the Bank had been captured by a
25 hostile force, would that be the failure because of which the stockholders should be liable? If the State itself should, by the exercise of its supreme power, take control of the assets of a bank; would that be the failure of a bank because of which the stockholders should be liable?

These would seem to make impossible any reply other than one in the negative. And if so, then is it but to know how complete was the control by the State of this and of all the banks in the State of South Carolina, to see clearly that what is called the failure of this and other banks is not that
26 failure which it may be presumed the Legislature referred to in this section of the charter—a failure resulting from fraudulent, or careless, management of a bank; but the overthrow of such institutions by an irresistible force; the force of legislation exercising its power so that the Bank should be managed to contribute to the successful result of large political measures which, in the exercise of its high power, the State had devised.

In 1857 (12 Stat., 630) the Legislature passed the Act "for the suspension of certain sections of certain Acts and for
27 other purposes."

The first section of that Act, provided that the operation of the 2nd Section of an Act entitled "An Act to provide against the suspension of specie payments by the banks of this State, ratified 18th December, 1840, be "suspended until

the 1st January, 1859; on *the express condition that no execution issued upon judgments already obtained, or hereafter to be obtained by any of the non-specie banks shall be enforced until such bank shall resume specie payments.*" The 2d Section of this Act suspended the operation of the 5th Section of the Act which re-chartered this bank until the 1st January, 1859. 28
The 3d Section imposed a penalty on any bank which issued or put in circulation bills exceeding three times the gold and silver coin or bullion in possession of the bank. The 5th Section of the same Act provides that from and after the 1st January, 1860, no bank shall issue or put in circulation, any note of a less denomination than ten dollars.

In 1858 (12 Stat., 699) the Legislature repealed the 5th Section above cited, but retained the penalty for the excess of bills over coin or bullion belonging to the bank.

In 1859 (12 Stat., 783) the Legislature suspended until the 29
1st January, 1861, the operation of the 3d Section of the Act of 1857 in relation to the excess of bills over coin and bullion, and the 6th Section of the Act of 1858, relating to the same matter, until the 1st January, 1861.

In 1860 (12 Stat., 860) the operation of these Sections was postponed until the 1st January, 1862. At the same time the 2d Section of the Act entitled "An Act to provide against the suspension of specie payments by the banks of this State," passed 18th December, 1840, was suspended until the 1st January, 1861. 30

In 1861 (13 Stat., 37) the suspension of the operation of these Sections was continued.

And in 1863 (13 Stat., 164) the operation of the same was continued until the close of the war then carried on and for one year thereafter. In the 2d Section it was also provided that the provisions of the said Act shall not extend to any bank which during the operation of the Act shall declare or pay a dividend to its stockholders as gold or silver coin, or shall sell or dispose of its gold or silver coin, except to the State or Confederate States. 31

On the 23d December, 1864, the 2d, Section was repealed.

In 1869 the Legislature passed the Act approved 13th

March, 1869, entitled "An Act to enable the banks of the State to renew business or to place them in liquidation." That Act in the first Section declared that "all banks incorporated by authority of this State, and which have by said authority issued bills of credit known as bank bills; *and have failed* to comply with said corporate privileges *by refusing to pay their bills of credit;* and are *now thus failing* to comply
32 with the provisions of said Act of incorporation in this particular, and shall so continue to violate said Act, until the 1st December, 1869, shall forfeit all corporate rights and privileges, and are forbidden to transact any business or banking institutions." To this is added, "Provided the redemption of their bills in United States currency shall be deemed the fulfillment of their obligations to the holders of the said bills."

Is not this Act a plain declaration, that in the contemplation of the Legislature the refusal to redeem the bills in specie, is "failure" of the bank to comply with its corporate
33 privileges and obligations? That therefore its "failure" was when it did so refuse? That at the time when it did so refuse, *then* the liability of the stockholder, because of failure of the bank, was complete. And *that time* is the time, which fixes the liability of such as were *then* stockholders or twelve months previous thereto.

If such "failure" is not the "failure" referred to in the charter, what is the "failure" which the charter contemplated, when because of that "failure," it declared that the stockholders should be liable?

34 And if the suspension of specie payments be the "failure," because of which the stockholder becomes liable, lapse of time is the complete bar to the recovery of the plaintiff. For the time between the suspension of specie payments by the Bank, and the time when the operation of the statute of limitation was suspended, added to the time which elapsed between the 21st December, 1866, and the commencement of this action would make the bar complete.

It need not be said that the interference of the supreme power of the State with the Bank was unlawful. Concede it,
35 and what then? Could the Bank resist it? But the State reserved to itself this power of control over the charter; it

could not be said to be usurpation, because the charter was taken subject to this power. And it was the exercise of this power; a power reserved by the express declaration of the forty-first Section of the Act of 1841; a power which this Court, in the case of Tomlinson *vs.* Jessup, 15 Wall. R., 454, declared could lawfully be retained, and so retained, was part of the charter granted. In the exercise of this power the Legislature declared it unlawful for the Bank to pay out gold or silver, except to the State, or the Confederate States; and if 36
the Bank did so contravene this special interdict, the suspension of specie payment was no longer to be condoned, but the charter should be forfeit to the State. In the exercise of the same power it legalized the suspension of specie payments, a necessity of the Bank which the war of the State had produced; and authorized investments to be made in Confederate securities; in that annulling the most positive restrictions which, in the charter itself, had been introduced for the guidance of the officers and the protection of the stockholders of these Banks, 37

It is in this connection to be specially observed, that no billholder before the Court became such until after the close of the war—after the Bank had ceased to have any business transactions—after these fundamental changes had been made in the whole organization and conduct of the Bank. And they who became creditors of a Bank after these changes had taken place, have no right to claim the benefit of such provisions as had been made in connection with business transactions in times of peace. Such is the rule laid down by this Court, (the Missouri R. R., 21 Wall. R., 249. The Legal 38
Tender Cases, 8 Wall. R., 604.)

But strong as are these considerations for refusing the relief asked for in the bill, they obtain increase of strength when we come to consider the circumstances which connect themselves with the claim in this case, and the party who makes it.

None of the bills of this Bank in this case were owned by the parties, who allege them to be owners thereof, prior to
39 1870; some in 1872, some later still.

The Bank ceased its functions at and after February, 1865.

Five, seven, perhaps more, years had passed after the Bank had ceased to do business, before any bill for which payment is now claimed, became the property of any claimant.

Not a single bill was received by any of the parties to this suit from the Bank as money; nor while the bills of the Bank circulated as money; nor otherwise than with the knowledge that the Bank was regarded as insolvent; nor in the course of trade, other than the trade of buying and selling the bills
40 of broken Banks. Is the failure of such billholders to realize the full value of the bills they have bought, the mischief which the Legislature intended to relieve? If such constitute that meritorious class for whose benefit this extraordinary Legislature was intended, then it will be that the relief asked against these stockholders may be granted, but not till then. And until the reason is seen why this class of creditors should be so protected, the relief they seek here cannot be granted.

41

Two leading considerations must affect us in determining the question for whose benefit this charter, giving it the widest latitude, was intended; and how far it is to operate against the stockholders. 1. That the mischief it was intended to prevent was the commission of a wrong done to
42 one dealing with the Bank; who took its bills at its counter, or in the course of trade, aspart of the circulating medium; and representing in good money its face value. 2. That the liability imposed on the stockholders was simply to redress the wrong done to one who trusted to the good faith of the

Bank; and therefore the stockholders became liable to make good that bill to one who had so taken it upon that faith. The liability was not created to punish the stockholders; but to save from loss one who had trusted to the promise of the Bank; while that promise was held out as the equivalent for money. 43

It must be remembered that this special liability of the stockholders of the obligation of the Bank is in the nature of a guaranty. It secures the performance of something which the Bank had undertaken, to some certain person, for a sufficient consideration. It was in no sense ambulatory; it was certain and precise. It could not be better expressed than in Caleb *v.* Hawthorne, when the Court said, "the creditor had this security when the debt was contracted." (2 Wall R. p. 231.) And the debt (with this liability as a guaranty) was contracted when the bill of the Bank was paid out by 44 the Bank as money; or passed, in the course of trade, as part of the circulating medium of the country.

There was a time when the liability arose; that time was when the failure of the Bank took place. There was a person in whose favor that liability then arose; that person was he, who then had the bill of the Bank. Concede the liability of stockholders as broadly as one pleases, it must be to some one or more certain persons at the time of the failure. How does the plaintiff here, who was not a creditor at the time of the failure, become possessed of that right which belonged to 45 that creditor? That creditor it may be assumed had the right to sue; how did this plaintiff acquire it? Lord Abinger said, in Prosser *vs.* Edmonds, 1 Y. & C. Ex., Case 481. "What is this but the purchase of a mere right to recover? It is a rule not of one law alone, but that of all countries, that the mere right to purchase shall not give a man a right to legal remedies. The contrary doctrine is no where tolerated and is against good policy. All our cases of champerty and maintenance are founded on the principle that no encouragement should be given to litigation by the introduction of 46 parties to enforce those rights which others are not disposed to enforce."

And this too is supposing that the plaintiff did obtain by purchase the right to sue. Did he do so?

No proof is produced of a transfer of this right to sue. If, as has been said, the right arose, it did at a certain time, and was then vested in a certain person, the then holder of the bill; but not in the plaintiff.

A bank bill when in circulation as money is not held to pass by assignment. Delivery gives title, and each one takes
47 as an original holder. Antecedent equities do not affect a *bona fide* holder. Such holder is not affected with the liability of an assignee; nor can he claim the right of an assignee. He does not succeed to any pre-existing right of action against the Bank; therefore does not succeed to the right of set off, which may have been the right of the holder preceding him. A holder has nothing to do with the right of his predecessor.

No relationship of a legal character arises from the transmission of a bill. (Morse on Banks, 399.) If the antecedent
48 right against the Bank itself, which belonged to the billholder before failure; or who was such at the time of the failure; does not pass to the holder after the failure; why does the right of such prior holder against the stockholder pass to the holder after failure? If it does, then this strange result will follow, that the holder of a bill becoming such after failure of the Bank, cannot set off or pay his debt to the Bank with that bill; but he can sue the stockholder, make him pay the face of the bill, and with that money pay his debts to the Bank. A conclusion so curious justifies examination of the
49 reasons claimed to give it support.

Crease *vs.* Babcock, 10 Metcalf, 525, is generally referred to as authority for the proposition, that the liability of the stockholder passes with the bill to every successive holder; no matter at what price he purchased the bill. In that case the liability of the stockholder was created by statute, and in these word: "the holders of stock in any bank at the time *when its charter shall expire, shall be liable* in their individual capacities for the payment and redemption of all bills which may have been issued by said Bank; and which shall remain
50 unpaid, in proportion to the stock they may respectively hold at the dissolution of the charter."

What is it that is said so to pass? A right outside of the bill and against those not parties to it. The contract, so to speak, is not in the bill, but in the charter. The obligation of the corporation may be a specialty, while that of the corporator is a simple contract. (Lindsay *vs.* Hyatt, 4 Edw., (N. Y.) R. 97.) (Bird *vs.* Hayden, 2 Abb., (N. S.) 65.) Without multiplying citations, it is sufficient to refer to the Cochicuate Bank, 3 Allen R., 42, holding that the statute declaring lapse of time not a bar to bills issued by a bank does not apply to 51
an action against the stockholder.

This liability constitutes no part of the assets of the corporation. Over it the corporate authorities have no control. (Wright *vs.* McCormack, 17 Ohio St. R., 86.) A Receiver has no power to call for it. And the proceedings to enforce the liability are under the statute and not upon the bills of the bank. In Week *vs.* Love, 50 N. Y., 569, the Court said that if the liability had been stamped on the bill it did not change the character of the bill or the guaranty; it simply stated a fact according to its existence in the charter. 52

With this guaranty, if the liability of the stockholder be so termed, collateral to the bill of the Bank; to arise upon a contingency; and when it does so arise, becoming then the right of some certain person; that right being the right of that certain person to sue; why should the transfer of the bill of the Bank be held to transfer also this right to sue the stockholder to one who has not suffered because of the failure of the Bank?

If it should be asked if it was the intention of the Legis-
lature to make the stockholder of a bank, which had been 53
forced into liquidation because of a state of war, liable to one who had bought the bills of that bank after its failure, for a few cents in the dollar, for the face of that bill, no one would venture to insist that such had been the intention of the Legislature. This promise of the Bank, in the form of its bill when so purchased, had ceased to have any semblance of money. It is of bills of such kind as are these that Mr. Morse says: "When they can no longer circulate as money having a fixed value, but can only be passed by way of bar-

54 ter, or exchange, becoming, in such cases, the subject of a special bargain as concerns the valuation at which they shall be received, then it is time to say that the taker can no longer set them off for their full face value." (Morse on Banking, p. 402.) The holder in such cases did not take them as money; they had ceased to be money, or represent money, and he cannot make them answer the uses of money. And, so taking them, he cannot complain of loss because they are not what he supposed they were, and has no claim upon the stockholder to make that bill to him other than it was when
55 he became the purchaser of it. As such purchaser he is a creditor of the Bank, but he has no claim on the stockholder. He bought that which had no fixed value.

The bill then as such does not carry with it to a purchaser, after the failure of the Bank, the rights which belonged to the holder of it before, or at the time of the failure. (McLaren *vs.* Pennington, 1 Paige R., 102; Niagara Bank *vs.* Roosvelt, 9 Con. R., 409.)

No proof is adduced to show that the holder, at or before the failure, transferred, by any act of his, to the subsequent
56 purchaser the right he had to enforce a claim against a stockholder.

Then will the law presume that such transfer was intended, and so execute it, as intended?

It would be difficult to conceive upon what such a presumption could be rested.

In the case of the holder, at or before the failure of the Bank, the liability of the stockholder to such billholder rests, as matter of contract, upon the representation held to have been made by the stockholder to the holder of the bill,
57 through the acceptance of the Charter in which the liability is imposed; that, in case of the failure of the Bank, the stockholder will be liable to such holder. (Hammersly *vs.* DeBiel, 12 Clarke and F., 45.)

Is any such representation presumed in law to have been made by the stockholder to him, who, years after the failure of the Bank, becomes the purchaser of that which is not money; which does not profess to represent it, does not circulate as such; has no fixed value, and is a mere subject of barter; in each case taken at a valuation agreed on between the buyer and seller? Is there ground for presuming that in such cases the law will hold that there is a presumed representation made by the stockholder to such a buyer, that he shall receive the full value of the bill? Unless such representation is to be presumed as having been made to such buyer, upon what ground can he claim that he has suffered loss because of the failure of the Bank? or that he trusted to the solvency of the Bank, and took its bill as money? or that his trust in so doing has been abused by the failure of the Bank, and entitles him to call upon the stockholders to make good the representation to him, that upon such a contingency the stockholder would be liable to him, to make that bill good to him for its face value?

To construe the section as supposed to impose a liability intended to protect those who dealing with the Bank, took its bills as money; or in the course of trade received them while they circulated as money; will fulfil every reasonable intention of the law given. And it is moreover consistent with the rule which refuses to the holder of a bill of exchange security given to the acceptor, unless there was representation made to him, at the time when he purchased the bill, that such security should protect the bill in his hands. (Citizen's Bank *vs.* First National Bank, L. R., 6 E. & J. App., 352.)

If this be the construction which should be given to the section, by which it is claimed that this liability of the stockholder is created, then is it reconciled with the decision in

Crease *vs.* Babcock, and with cases decided in this Court, in which it has been held that the contract (as in the case of receiving the bills of a bank for taxes,) was attached to the bill
61 and passed with it to each holder. Woodruff *vs.* Trapnall, 10 How. R., 206; Furman *vs.* Nichols, 8 Wall., 44; State *vs.* Stoll, 17 Wall., 425.) In Crease *vs.* Babcock, and in the other cases just cited, the obligation was connected with the bill itself. It was the bill which was to be paid, it was the bill which was to be received for taxes. The difference between the cases referred to, and the case before the Court, is the difference between a personal covenant; and a covenant incorporated with, and a part of something to which it relates. An obligation to retire bills specially named at a certain
62 time, or to receive them for taxes, as such bills; is altogether different from an obligation to respond to those who suffered loss because of the failure of the Bank. In the one case, the thing is presented, in which the obligation is incorporated; in the other case, the person is referred to, who, because of his loss, is entitled to enforce the representation, which is given to protect him from loss. What loss? That which results from the bill he has and which he took as money, not being such. That is the consequence of the failure of the Bank: and he who suffers be-
63 cause of that failure is he to whom, in the contemplation of law, the representation has been made by the stockholder, because of which he is entitled to be protected from loss. In the one class of cases it was the *intention* of the Legislature to affix to the bills of a Bank a certain quality which would give them a fixed value. In the other case there was no purpose, public or private, which was, or could be subserved in doing more than preserving the public interest by protecting from loss the private rights of him who had taken the bills of the Bank as money; as such, having a fixed value; and that
64 value destroyed because of the failure of the Bank.

Surely no reason founded in law, or derived from the sense of what is just, can be presented to this Court which will force it to carry this liability of the stockholders beyond the point where it shall avail those who have been dealing with

the Bank and suffered because of its failure. He who for a trifle has purchased a claim against a Bank years after it has failed, has had in no sense dealings with the Bank. He speculates upon the chances of what he can make by his purchase; it was not he who was in the contemplation of the Legislature when it declared that the stockholders should be 65
liable in case of the failure of the Bank. Woodruff *vs.* Trapnall carried to its furthest limit the incorporation with the bills of the Bank of the State of Arkansas, of the obligation of the State to receive it for debts due to it. The State repealed the charter, and the question was whether that repeal discharged the obligation of the State. This Court divided upon the question, and the obligation of the State was enforced by the opinions of five to four, in a full Bench. But the case now before the Court requires that it shall carry to the farthest limit the application here of the rule it applied in 66
Woodruff *vs.* Trapnall. It did so in that case because of circumstances which do not exist in this case. The decision there was to give effect to a positive obligation which the State of Arkansas had self-imposed; the words used in the Act received the only construction which could be given to them. In this case the intention of the Legislature is to be inferred from its language, and the mischief to prevent which that language was used. Give effect to it to prevent wrong; to protect from loss; but not to stimulate and reward "a volunteer in a speculation," and concerning whom this Court 67
can repeat its language in The Mohawk, (8 Wall. R. 162) that "the experiment must fail."

If it be so that there is a liability of the stockholder to the plaintiff, the decree is not such as is proper. Under any view of the liability it is submitted that the decree will be reversed, and the case sent back.

The decree in this case, without inquiry as to the amount chargeable on each stockholder, directs judgment to be entered against each defendant for the extreme amount for which he could be charged. 68

It is submitted that the Circuit Court having decided the liability of the stockholders, a reference should have been ordered to ascertain the amount of the indebtedness, and the proportion thereof for which each stockholder was bound.

In the matter of the Hollister Bank, 27 N. Y. Rep., 393, the liability of the stockholders was imposed in these terms: "The stockholders in every corporation * * issuing bank notes, or any kind of paper credits to circulate as money * * shall be individually responsible to the amount of their respective share or shares," etc. The Court said: "The lia- 69
bility imposed by this statute upon the stockholders of banking associations is a several liability for a ratable and equal share of the debts, in proportion to the whole debts and the whole capital stock, and not a liability to each creditor until he is paid, limited only by the amount of stock held by the stockholder."

Crease *vs.* Babcock, 10 Metcalf R., pp. 557–559, establishes the same rule, as wholesome and entitled to consideration, "in determining the intent of the Legislature in framing a
70 system of regulations which should secure the public from loss without exposing particular shareholders to unlimited or unforeseen liabilities." Therefore, in that case, the Court held that "no stockholder can be responsible beyond the proportion which the number of shares held by him bears to one thousand, the whole number into which the capital was divided by the charter." This case further decides that if any of the stockholders cannot be reached, or are insolvent, this does not increase the liability of any stockholder; that "those who are solvent do not stand in the relation either of joint
71 debtors, or sureties, or guarantees, for the insolvent."

The same rule is laid down in Morse on Banks and Banking: "The liability of each stockholder is precisely for his ratable proportion of the sum total of that indebtedness of the Bank which is to be borne by the shareholders." * * "Those who are solvent and accessible have not the burden of paying off the whole sum which is due from all together, but only their own proportionate shares. It is the same if the Bank owns shares of its own capital stock. In assessing the other shareholders the calculation will be made upon a
72 basis, including these shares, precisely as if they were held by any outside party (p. 440, and cases cited in Note 1).

In Pollard *vs.* Bailey, 20 Wall. R. 520, this Court held to the same rule: "Each stockholder is bound for the debt in proportion to the stock, * * He must pay a sum which shall bear the same proportion to the whole indebtedness of that his stock bears to the whole capital, and is not required to pay more." * * "No stockholder is liable for more than his proportion of the debts." * * "The provision therefore for a proportionate liability, is equivalent to a provision for an appropriate form of equitable action to enforce 73 it." Of course the decree should be consistent with that relief which the action is intended to afford.

In the South Carolina Manufacturing Company *vs.* The Bank of the State of South Carolina, *et al.*, 6 Rich. Eq. 227, the Court held that solvent stockholders of the Nesbit Manufacturing Company were not bound to make up for creditors the deficiency of defaulting or insolvent subscribers. In that case, th spirit of this legislation in this State is well explained, and the application of the rule of joint and several liability to the case of manufacturing companies sustained. 74 On the same point Johnson *vs.* Underhill, 52 N. Y. Rep., 203. Garrison *vs.* Howe, 17 N. Y. Rep., 458. Weeks *vs.* Love, 50 N. Y. Rep., 458.

"Individually" in the case now before the Court, means no more than "respectively." In the Revised Statutes of the United States, Sec. 5; 151, p. 1,001, it is used not in antagonism with, but consistently with a responsibility "equally, and ratably, and not one for another."

In the case of Terry *vs.* Calnan, 4 South Carolina R., 508, the Supreme Court of that State reserved the question 75 "whether the facts alleged by the plaintiff constitute a sufficient cause of action," (p. 510,) but declared its judgment as to the right of the plaintiff to demand a separate judgment against "each stockholder" for a sum equal to twice the amount of his, her, or their share or shares, or interest therein." The Court contends that a several judgment could not be entered against each, and that the form of the complaint to enforce the liability, "is not reconcilable with any claim to relief, but such as can be granted through the equitable jurisdiction of the Court." "The undertaking (said Ch. J. Waite,) 76 assumed by the stockholders, is not to pay debts, but to pay any sum not exceeding twice the amount of his shares."

(Marsh *vs.* City Council, MSS. C. C. U. S., (So. Ca.) May T., 1875.)

The case of Perry *vs.* Calnan, already referred to, has been
again recently before the Supreme Court of the State. The
Court still reserves the question of the liability, but remands
the case to the Circuit Court, with the following directions:
to ascertain "at what time did the failure of the Bank occur?
77 Who were stockholders at the time of such failure, or were
interested therein at any time within twelve months previous
thereto? What was the amount of shares held by such stock-
holders respectively? When did the plaintiff, and others,
claiming as billholders, become possessed of the bills of the
said Bank claimed by them; and to ascertain what amounts,
if any, are properly chargeable against the defendants by
reason of the matters alleged in the complaint, and to appor-
tion such sum among the several defendants found liable in
the ratio of the amount of stock held by them as aforesaid?"
78 (MSS. Decree.)

The judgment of the Circuit, which was so set aside, was
in the argument attempted to be sustained upon the au-
thority of the decree in this case; from which, in its material
parts, it seemed to have been copied. The several matters
which the Supreme Court directs to be ascertained, suffi-
ciently indicate the issues which it deemed important; while
the direction as to the manner in which the amount of the
liability is to be ascertained, if it shall be decided to exist at
all, fully and positively decides that it is in the ratio of stock
79 held; and is, therefore, in accord with the cases cited.

A. G. Magrath

4

Supreme Court of the United States.

JAMES P. CARROLL *et al.*
vs.
JOSHUA & THOMAS GREEN.

SUPPLEMENTAL BRIEF OF A. G. MAGRATH.

To the claim of the defendants in error, complainants in the bill filed in the Circuit Court, the plea of the statute of limitations has been made.

In the answer of T. J. Robertson it is thus made: "This defendant saith that the cause of action stated in the bill did not accrue within four years before the exhibiting said bill." (Rec., p. 9.)

Same plea in answer of C. H. Baldwin. (Rec., p. 20.)

Same plea in answer of L. D. Childs. (Rec., p. 23.)

Same plea in answer of P. W. Chick. (Rec., p. 33.)

Same plea in answer of W. B. Stanley and others. (Rec., p. 36.)

Defendants in error, in their replication, take issue thus, and "say that the cause of action did accrue within four years before the exhibiting or filing of said bill; and that the said repliants will be ready to aver and prove." (Rec., p. 48.)

Same replication to the plea of others. (Rec., pp. 51, 54.)

The time of the failure of the bank is stated in the bill as the 1st December, 1862. (Rec., pp. 2, 3.)

The referee reports his conclusion that it became insolvent some time during the month of February, 1865. (Rec., p. 67.)

The decree does not decide the time of failure, (Rec., p. 79,) but entertains jurisdiction of the cause, in which the failure, and therefore the liability alleged to arise therefrom, is set out as of the 1st December, 1862, or within twelve months previous thereto, and orders judgments entered against stockholders who held shares in the Exchange Bank in the month of February, 1865, or within twelve months previous thereto.

The decree does not confirm the report of the referee, nor in any manner, unless by mere implication, indicate the time of failure. The manner in which the referee sustains his conclusion is seen in the record, (p. 67.)

Whether that is a decree which is final which does not adjudge the essential question in the case, the time of the failure of the bank, is submitted to the court.

But, for the purpose of the argument, suppose the decree had fixed the month of February, 1865: these proceedings would be defective, for the charge in the bill was that the failure took place in December, 1862.

Whether these proceedings could be amended so as to conform to a cause of action so wholly different in date, and therefore to the persons affected by them, need not be discussed.

Certainly the clearest proof would be required that all persons charged as liable because of a failure of the bank in February, 1865, were the same persons who would be liable in case of the failure in December, 1862.

But to sustain the plea, it is asked, waiving for the present the objections and irregularities referred to, and supposing, for the sake of the argument, that the failure did take place in February, 1865: when did there arise a cause of action, supposing the plaintiffs in error to be liable?

In Cohrs *v.* Fraser & Co. (5 So. Ca. R., 351) the Supreme Court of the State said: "When did the right to sue accrue?" At the moment of the breach of the contract; for then the duty which it imposed was violated. If four years have elapsed from the time when the plaintiffs could have commenced their action, the statute, if interposed, must protect the defendants; for the very purpose of its enactment was "to prevent persons from being harassed at a distant period of time after the injury complained of."

The replication of the defendant in error narrows the question to the single point, did the cause of action accrue against the plaintiffs in error four years before the filing of this bill?

Cohrs *v.* Fraser & Co., just cited, states the general rule upon the subject.

Terry *v.* Tubman, recently decided in this court, is conclusive. In that case this court said: "We think the liability for the 'ultimate redemption' of the bills, if properly enforced, arises when the bank refuses or ceases to redeem, and is notoriously and continuously insolvent."

That, said the referee, was in February, 1865.

The lapse of time that would be a bar is and was in South Carolina four years.

Therefore, in February, 1869, this cause of action would have been barred.

But the operation of the statute of limitations was suspended in South Carolina until the 21st December, 1866.

But this does not avail the defendants in error; for four years would have barred his cause of action in December, 1870, in the courts of the State if proceedings had been commenced in those courts.

But he has sued in the court of the United States. That court was open in South Carolina in June, 1866. In that court, therefore, the plea of the bar of the statute was complete in June, 1870.

The bill of complaint was filed and subpœna taken out on the 18th June, 1872. The bar of the statute was complete when the bill was filed in this case.

In the United States *v.* Muhlenbrick, 1 Wood's C. C. Rep., 509, held, that when after the war the United States courts in Georgia were open and claimants could proceed to sue, if they failed to do so, lapse of time would be a bar.

In Harris *v.* Gray, 49 Geo. R., 585; 15 Am. Rep., 684, held, that where the Constitution of the State of Georgia prohibited the institution of a suit, but the Supreme Court of the United States pronounced this provision unconstitutional, such suit is not protected from the bar of the statute upon the ground, that until the decision of the Supreme Court of the United States it could not have been successfully prosecuted.

In Samples *v.* Bank, 1 Wood's C. C. Rep., 523, held, that even in the case of the bills of a bank, which have ceased to circulate as currency and to be taken in and reissued by the bank, they no longer have the distinctive character which excepts them from the operation of the statute of limitations.

The rule that the protection which is given to the bill of the bank is not applicable to a claim made against a stockholder is well recognized, and that the liability of a stockholder is barred by lapse of time, as applied to a simple personal contract, has been too often affirmed to be now questioned. Corning & Horner *v.* McCullough, 1 Com., 47; The Atlas Bank, 9 Met., 192; Lowry *v.* Inman, 46 N. Y., p. 125; Cochituate Bank, 3 Allen, 42; Lindsay *v.* Hyatt, 4 Edw., 97.

Nor can any class of cases be found where the protection of the statute could be more fairly invoked than by those who are sought to be charged with this extreme and ruinous liability.

A. G. MAGRATH,
Of Counsel for Appellant.

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A. G. Magrath,
Of Counsel for Appellant.

5

SUPREME COURT OF THE UNITED STATES.

No 216.

JAMES P. CARROLL, Et. Al.,

vs.

JOSHUA AND THOMAS GREEN.

ARGUMENT IN BEHALF OF APPELLEES.

CORBIN & STONE, For Appellees.

Edward Perry, Printer, 149 Meeting St., Charleston, S. C.

In the Supreme Court of the United States.

J. P. CARROLL, Et. Al.,

APPELLANTS.

VS.

J. & T. GREEN,

APPELLEES.

Argument on behalf of J. & T. Green, Appellees.

The record in this case fails to show any specific assignments of error, and it is not therefore easy to determine the grounds on which the Appellants rely.

The statement (incorrectly called "statement of *facts*,") filed in the Circuit Court by the counsel in the cause (Record, folios 198 to 204) shows the issues of fact and law raised by the pleadings.

The facts found by the Special Master were not excepted to by any of the Appellants except in two particulars (Record folios 188-9), and these exceptions were sustained by the Court. So far then as the *facts* are concerned, there is nothing brought up for review.

The issues of law raised by the pleadings and determined by the Circuit Court are, consequently, those issues which are to be reviewed and determined here.

These issues, as appears by the statement referred to, are as follows:

1. That the cause of action is barred by the Statute of Limitations. (Record, f. 200; 1-2.)

2. That whatever liability may have been imposed upon defendants by the charter of the Exchange Bank of Columbia was, in law, removed and annulled by sundry Acts of the General Assembly of South Caro-

lina, referred to in the pleadings. (Record, f. 201; 3.)

3. That the Assets of the Bank had not been exhausted, nor their value ascertained. (R., f. 201; 4.)

4. That the liabilities of the said Bank had not been ascertained. (R., f. 201; 5.)

5. That the Act of March 13, 1869, did not provide for the continuation of the liability of stockholders after the forfeiture of Bank's corporate rights and privileges. (R., f. 201; 6.)

6. That complainants obtained the notes long after they ceased to be redeemable for a price far below their face value, and are not entitled to recover more than they actually paid, &c. (R., f. 201; 7.)

7. That complainants obtained no judgment on their bills. (R., f. 201; 8.)

8. That complainants did not allege that they held their bills at the time the defendants sold their stock, or within twelve months subsequent thereto. (R., f. 202; 10.)

9. That complainants did not allege want of knowledge of the failure or insolvency of the Bank when they became holders of the bills. (R., f. 202; 11.)

10. That complainants did not allege that they held bank bills at the time of the failure of the Bank. (R., f. 202; 12.)

11. That the charter of the Exchange Bank expired by limitation Jan. 1, 1874, and that thereby and by law all liability on the part of defendants ceased and became extinct. (R., f. 203.)

The issues raised by the pleadings, viz.: that complainants should prove that their bills were not illegally issued, (R., f. 202; 9th) and that they should further prove that their bills were not bills which had been stolen, (R., f. 202-3) involved questions of fact. The Special Master does not report that any bills were illegally issued, as charged in defendants' pleadings, but he does find that complainants' bills were not bills which had been stolen. (R., f. 180). To this portion of his report, no exceptions were taken; therefore, no argument on these points is necessary.

The allegations of the defendants' pleadings that the complainants obtained their bills long after they ceased to be redeemable, for a price far below their face value, also raised a question of fact, as to which the Special Master reported that the entire amount of the bills, except some twenty or thirty dollars, were obtained by complainants at their face value. All of the bills in controversy they owned prior to January 1, 1870. (R., f. 177.)

To the portion of the report of the Special Master relating to this matter, no exception was taken. As the pleas assert that complainants are not entitled to recover *more* than they paid for the bills. (R., fols. 34, 54, 61, 88, & 96,) this is substantially an admission that the complainants—if not prevented from recovering on other grounds than that set up in this special plea—are entitled to recover the face value of the bills, since the Special Master reports that complainants took such bills at a cost not less than their face value.

For convenience of argument, the issues of law now before the Court for settlement, may be grouped into five classes, as follows:

Those which relate to—

I. The complainants' right to maintain the action on the ground, (1) that the assets of the Bank had not been exhausted nor their value ascertained; (2) that the liabilites had not been ascertained, and (3) that no judgment against the Bank had been obtained;

II. The sufficiency of the allegations of the bill; (1) as to the time when complainants held the bills, and (2) as to complainants' knowledge of its failure;

III. The effect of the expiration of the charter of the Exchange Bank;

IV. The effect of legislation subsequent to the charter, upon the rights of creditors of the Bank;

V. The Statutes of Limitation.

ARGUMENT.

I.

The bill in this case alleged as a matter of fact, that the Exchange Bank of Columbia had failed, and was unable to pay its debts, and that a Receiver thereof had been appointed by the State Court, who was, at the time of filing the bill, in possession of the assets; that said Receiver had refused when called upon, to pay the Bank notes owned by complainants, and that said Bank was indebted to an amount far in excess of its assets. R., f. 67.

The Circuit Court did not dismiss the bill for want of jurisdiction, or because there were not proper averments therein, but proceeded to hear the same. On the hearing, the burden of proving the allegations of the bill fell on complainants, who established the fact that the bank became insolvent during the month of February, 1865, and that the assets of value belonging to the Bank amounted to $1910.29. (R., f. 176.)

Indeed, it appeared from the answer filed by the Receiver, that the value of all the assets was but $1910.29, out of which taxes, costs and fees were to be deducted. (See Schedule of Assets R., ff. 56, 57.)

For the purpose of this action, it was unnecessary to ascertain the *liabilities* of the Bank. If it owed complainants more than its assets were worth, then it was wholly immaterial what might have been its indebtedness to other creditors.

Did, then, the Circuit Court err in allowing complainants to proceed with their action, notwithstanding they did not allege that they had previously obtained a judgment at law against the Bank?

The cases in which the rule of equity is laid down that the remedy at law must first be resorted to and exhausted before application could be had to the Court of Equity for relief, will be found to be cases where creditors are resorting to equity, to aid in the enforcement of purely legal remedies.

In such cases the creditors, "if they want relief touching the *personal assets* of their *debtors*, must show that they have taken out execution at law, and pursued it to every available extent, against the property. * *" If the creditor "seeks aid as *to real estate*, he must show a judgment creating a lien upon such estate; if he seeks aid in respect to personal estate, he must show an execution giving him a legal preference or liens upon the chattels."

Brinkerhoff vs. Brown, 4 John., Ch. p. 675, and authorities therein cited.

Williams vs. Brown, Ib., 682.

McDermutt et. al. vs. Strong et. al., Ib., 688.

To the same effect are the decisions of the Courts of Equity of South Carolina.

Screven vs. Bostick and wife, 4 McC. Ch., 410.

Brown vs. McDonald, 1 Hill, Ch., 297.

Kennedy vs. Simons et. al.; Dudley's Eq., 141.

Eno et. al. vs. Calder et. al., 14 Rich., Eq., 154.

In all of the cases cited, there were individual creditors who sought, through a Court of Equity, to obtain relief upon demands which they could not have satisfied at law.

In the present case however, the circumstances are different. Here the complainants file a bill not merely for their own benefit, but for the benefit of all other creditors of the Bank in like condition with them, against all stockholders whom they can discover, to compel them to contribute towards a common fund to pay their demands.

The relief sought is peculiarly equitable, and when the allegations of the bill show, as they do here, that the Bank has failed and has gone into the hands of a Receiver, and that the liabilities far exceed the assets, it is unnecessary that those creditors who seek no preference by their action, but who call in all others to share with them the fund that may be realized, should have first established their demand at law against the Bank.

Chancellor Kent in Thompson vs. Brown, 4 John Ch., 619, discusses very fully the subject of Creditors' Bills. He reviews the English cases on this subject from the year 1697. He cites the great case of Morris vs. The Bank of England—cases *Temp*. Talbot, 218—wherein it was established that decrees in Chancery were equal to judgements at law, and entitled to the same effect in the distribution of assets.

He also cites the case of Martin vs. Martin, 1 Vesey, 211, wherein actions at law were brought by several bond creditors against the heir, and a bill was also filed against the heir by other bond creditors on behalf of themselves and the other creditors, to have satisfaction out of the real and personal assets. Here was a race of diligence by different sets of creditors in different concurrent jurisdictions. A decree was obtained in Chancery, directing an account of the debts and a sale of the real assets descended, to satisfy those demands. The heir then filed his bill to restrain those bond creditors who sued at law, because, by the decree for a sale, the fund was taken from him. The injunction was granted, but the Lord Chancellor observed that *until a decree*, a proceeding by different creditors in different suits in law and equity, cannot be stopped, or the chance of gaining priority prevented.

This case, Chancellor Kent remarks, settled the rule that in a suit against the heir, and decree for a sale, it enures to the benefit of all the creditors against the heirs, and draws the entire distribution of the assets of the heir into the Court of Chancery.

See also Story's Eq., §§546-7.

In Reeder vs. Speake, 4 S. C., (N. S.) 293, the Court says: "That a creditor has no right to come into equity until he has exhausted his legal remedy against his debtor, is true, as a general rule, but Courts of Equity, from their earliest institution, so far as we are informed by their history, have entertained proceedings on behalf of creditors claiming demands, not only against insolvent estates, through an account from their personal representatives, *but where difficulties would attend the enforcement of judgments at law, or where a multiplicity of suits would be prevented* through the interposition of a case in equity," &c.

Again, in the case of Terry, vs. Calnan, 4 S. C., (N. S.) 508, the Court ordered that an action brought by plaintiff against the receiver and several stockholders of the Commercial Bank of Columbia to recover on bills of the said Bank, should be amended so as to make the action one in behalf of the plaintiff and all other creditors of the Bank who should afterwards seek to come in on the usual terms, &c.

The course pursued in the present case is the one which the Supreme Court of South Carolina declared to be proper in the case just cited, and is also in accordance with the course sustained and approved by the Supreme Court of Massachusetts in Crease et. al. vs. Babcock et. al., 10 Met., 525, and Grew et. al. vs. Breed et. al., Ib., 569. Besides, in the present case, it is apparent from the allegations of the bill, which are not controverted, that these complainants, at the time they filed their bill, had no plain and adequate remedy at law. The assets of the bank were alleged to be in the hands of a Receiver, appointed by the State Court. To have sued the Bank would have been an empty farce, inasmuch as all of its property had passed from its control into that of an officer of the State Court. There was manifestly then no plain and adequate remedy at law. Nor would the mere obtaining of a judgment against the Bank have determined any rights which could not as well have been determined in this action The judgment would have simply been for so much money due upon certain notes issued by the Bank. But those notes were produced in evidence in this cause and were declared to be genuine by former officers of the Bank. (Testimony of Henry E. Scott, Record, f. 165-6.) Again, the stockholders were at liberty in this action, to avail themselves of any and every defence which could have been urged by the Bank in an action at law.

It is clear, therefore, that this is a case to which the general rule of equity does not apply, but a case in which the record shows that difficulties would have attended the enforcement of a judgment against the corporation, all of whose assets were in the hands of a Receiver of another tribunal, and not one cent of which assets could be touched by the Marshal by virtue of an execution against the corporation.

The Circuit Court therefore, did not err in refusing to dismiss this bill.

II.

The next question which arises is, was it essential to the maintenance of this action, that the complainants should allege (1) that they held their bills at the time defendants sold their stock or within twelve months subsequent thereto, or that they held them at the time they alleged that the Bank failed; and (2) that they should allege want of knowledge of the failure or insolvency of the Bank when they became holders of the bills?

To this we reply: That the complainants' right to recover in this action does not rest upon the *time* at which they acquired or held the Bank notes in question, except so far as the statute of limitations is concerned. If the notes or bills are genuine and they are *bona fide* owners and holders of them for value, they are entitled to recover *something* for them. If it were essential to show when and how they acquired the bills, then these matters were to be proven as facts. The complainants have proved these facts, no objection was made to their doing so, and the report of the matter as to these facts has not been excepted to.

Neither was it essential to allege want of knowledge of the failure of the bank at the time when complainants obtained the notes. The mere fact of the failure of a bank or failure of an individual, does not render their obligations void. Their obligations are as much a matter of purchase and sale after failure as before, and, unless there were fraud on the part of the creditor or on the part of the debtor who issued the obligations, no Court of competent jurisdiction could refuse to enforce them in favor of any *bona fide* holder thereof.

This proposition is so plain and so consistent with good sense and sound reason that no authority is necessary in support of it.

III.

What effect had the expiration of the charter of the Bank upon the rights of creditors of the Bank?

1. The corporation and the corporators are, in law,

totally independent persons, having distinct and separate interests in the property of the corporation.

Van Allen vs the Assessors, 3 Wall., p. 584.

Belcher vs. Wilcox, 40 Ga., p. 399.

2. The stockholders and the corporation being distinct persons, can contract with each other and with third parties in their individual capacity.

Waring vs. The Catawba Co., 2 Bay., 109 (decided in 1797).

Tileston et. al. vs. Newell et. al., 13 Mass , 406.

3. If the liability of the stockholder is not upon an actual contract but is a liability declared by statute or by the charter of the corporation, then every creditor of the corporation can enforce this statutory liability in the same manner that he could enforce an express, written agreement of the several stockholders to pay the debts of the corporation to the amount fixed by the charter or statute. And this is so whether the nature of this liability be regarded as *primary*, as it is held to be in the cases of Corning vs. McCullough, 1 N. Y., 47; Moss vs. Averill, 10 N. Y., p. 459; Hatch vs. Burroughs, 1 Wood, 440; Bird vs. Hayden, 2 Abb. Pr. R. (N. S.) 61;

Or secondary, as it is held to be in Patterson vs. Wyomissing Manuf'g Co., 40 Penn., 117; Lane vs. Morris, 8 Ga , p. 476; Thornton vs. Lane, 11 Ga., p. 496; Belcher vs. Wilcox, 40 Ga., p. 399.

The correctness of these propositions will hardly be questioned.

But it is contended that they cannot be applied to the case of a corporation which is concerned in making negotiable obligations, the payment of which obligations the stockholders have assumed by accepting the charter and holding stock in the corporation, because by the *common law*, on the expiration of a charter or on a dissolution of the corporation by judgment of forfeiture or otherwise, all debts to or from the corporation are at once and forever extinguished.

Without denying the existence of this rule of the common law, we maintain that it is not absolute and that it does not apply to the case in question.

Here the complainants are not seeking to obtain a judgment against the *corporation* on obligations of the corporation, but they are seeking to enforce the right given them by statute to recover from stockholders as *individuals* and not as a corporation, the amount which such stockholders solemnly bound themselves to pay to the creditors of the Bank, if the corporation itself failed to fulfill its obligation.

That the individual stockholders could, without being compelled thereto by statute, assume the obligation of paying the debts which the corporation might contract, we have already shown. The fact that this obligation is assumed in obedience to statute does not alter the relative situation of the stockholders to the creditors. In either event, on the happening of the contingency which is to make the stockholders liable, (in the present case, the failure of the Bank) the creditor has a perfect remedy against the individual stockholders which cannot be impaired by the subsequent dissolution of the corporation or by the death of some of the stockholders.

If we regard the stockholders and the corporation as *jointly* bound to pay the debts of the Banks like members of a partnership, then, on the dissolution of the corporation the creditor would have his remedy against the survivors, that is, the stockholders.

Story on Partnership, §361.

If we regard the stockholders and the corporation as *severally* bound to pay the notes of the Bank, when the Bank fails, then the fact of the dissolution of the corporation cannot effect the several obligations entered into by the stockholders as individuals.

Finally, if we regard the stockholders as sureties or as guarantors that the Bank will pay its obligations, then the fact that the Bank, as the principal creditor, has ceased to have a legal existence, and that therefore no action can be brought against it, cannot discharge the independent liability of the stockholder as a surety or guarantor any more than would the death of a principal upon a bond operate as a discharge of the surety.

This whole question has been carefully examined by the Supreme Court of Georgia, and the doctrine has been there firmly established that the dissolution of a corporation or the expiration of its charter does not carry with it the extinguishment of the obligations due by it for which stockholders are individually liable.

The first case where this was determined is Lane vs. Morris, 8 Geo., 468.

This was an action at law, brought by the plaintiff in error vs. Morris, defendant in error, to recover from him the amount of his liability for unpaid bills of the Planters and Mechanics Bank of Columbus.

The section of the Bank charter imposing individual liability, is as follows:

"Sec. XI. The persons and property of the stockholders shall be pledged and held bound in proportion to the amount of shares and the value thereof that each individual or company may hold in said Bank for the ultimate redemption of the bills or notes issued by said Bank, in the same manner as in common actions of debt, &c." (Prince's Digest of Laws of Ga., p. 127.)

One of the pleas relied on by the defendant was that by the forfeiture of the charter of the Bank on June 13, 1843, the defendant's liability had ceased.

The Court below sustained this plea, but the Supreme Court reversed the decision. In giving the opinion of the Court, Lumpkin, J., said: "When the defendant made himself a stockholder, by subscription or purchase, he became ultimately bound to pay the bills and notes of the Bank by an express stipulation, to which he voluntarily assented for his own benefit and his individual property and credit were thereby pledged to each holder of the bills and notes to fulfill this stipulation; and it is upon this undertaking, which no power can impair, that this proceeding is instituted. (p. 477.)

In Hightower vs. Thornton, et. al., 8 Ga., 486, a similar decision was rendered. This was equitable action to compel stockholders of the same corporation as that referred to in Lane vs. Morris, to pay into Court the unpaid balance due on their subscriptions to the capital stock of the Bank.

The Supreme Court held that the right of action was not lost by the forfeiture of the charter of the Bank.

In Thornton vs. Lane, 11 Ga., 459, the same question is again raised in an action at law upon the liability of a stockholder in the same corporation. Judge Lumpkin again delivered the opinion and re-affirmed the principles declared in Lane vs. Morris and Hightower vs. Thornton.

Lane vs. Harris, 16 Ga., p. 217, was another action at law, founded on the eleventh section of the charter of said Planters and Mechanics Bank of Columbus. The Supreme Court held that he was entitled to recover, notwithstanding the forfeiture of the charter.

In Moultrie, et. al., vs. Smiley, et. al., 16 Ga., 290, the same question is again raised and determined according to the authorities just cited.

This was an action at law brought against plaintiffs in error, as directors of the Commercial Bank of Macon, to recover from them the amount of certain judgments held against the Bank on the ground that by the charter of the Bank, the directors were liable for its debts over and above three times the amount of stock paid in.

The defendants pleaded the general issue, and subsequently an additional plea that *since the last continuance of the cause,* the corporate existence of the Bank had expired by its own limitation, whereby the corporation became extinct, and all debts and liabilities due to or from the corporation became extinct also.

The Court was divided in opinion, but Judges Lumpkin and Starnes composing the majority of the Court, concurred in their conclusions that the expiration of the charter of the Bank did not extinguish the personal liability of the directors for the obligations of the Bank. Judge Lumpkin, in the course of his opinion makes a full and exhaustive examination of all the authorities on this subject, and shows the origin and reason of the common law rule that on the dissolution of a corporation the debts due from it are extinguished, and shows wherein this rule cannot be applied to the independent and separate contracts which corporators enter into with their and the corporations' creditors.

A single selection only is made from this opinion: "Where two or more persons are jointly but not severally liable on a simple contract debt, a judgment obtained against one, is, at common law, an extinguishment of the claim on the other debtor. But here the corporation and the directors are severally and not jointly liable, the one in their collective and the other in their individual character. And yet, it is contended that the discharge of the debt, by operation of law, as to one, is a discharge of both.

No one doubts the power of this and other Banks to draw, accept or endorse bills and promissory notes. Suppose a bill had been drawn by an individual or another bank, and accepted by the Commercial Bank of Macon; and the latter failing at maturity to pay, the paper had been protested, and notice given to the drawer before the expiration of the charter—would there be any question as to the liability of the drawer? So if the Macon Bank had been the maker of a negotiable note which was subsequently endorsed, the liability of the endorser would be indisputable, notwithstanding the expiration of the Macon Bank charter." (pp. 318-9.)

In Robinson vs. Lane, 19 Ga., 337, decided in 1856, the Court reiterates its judgment that the forfeiture of the charter of the Planters & Mechanics Bank of Columbus did not extinguish the *debts* due by the bank. (p. 346.)

In Robinson vs. Beall. 26 Ga., 17, decided in 1858, the effect of the expiration of the charter of the said Planters and Mechanics Bank of Columbus, upon the liability of its stockholders for the ultimate redemption of its bills, was again before the Court for decision. This time the judgment of the Court was adverse to its previous rulings, Judge Benning delivering the opinion.

But Judge Lumpkin filed a dissenting opinion in which he reviews his former opinions in Moultrie vs. Smiley, Robinson vs. Lane, &c., and with great earnestness and much vigor of expression, he re-affirms his settled convictions on this point.

After these conflicting opinions, came the case of Hargroves vs. Chambers, 30 Ga., 580, wherein the same question is again raised as to the same Bank. This case was decided in 1860, Lyons, J. delivering the opinion of the Court. The action was brought to trial in the Court below in 1859. The charter of the Bank, had it not been forfeited, would have expired by limitation in 1857. This fact was urged as one of the grounds why the bill-holder could not recover.

But the Court held that the expiration of the charter did not extinguish the liability of the directors, who were sued in this case, and re-affirmed the decisions in the cases of Hightower vs. Thornton, and Thornton vs. Lane. One of the concluding points of the opinion in this case, is as follows:

"Suppose however, that we admit that the debt of the corporation is extinguished by its death, how does that effect the liability of these directors? Their liabilty is independent entirely of that of the Bank, and exits for a different reason. They are, by the charter, to be liable for this debt in their individual capacity. What does the continuance or dissolution of the corporation have to do with the individual rights or liabilities of its members? Nothing whatever. The liability of the director is created by his own act, and in derogation of the chartered privileges, is not dependent on its continuous existence, and its failure does not protect him, but it does and must remain *until satisfied* or released by act of the creditor." (p. 606.)

On the soundness of the reasoning of Judge Lumpkin and Judge Lyon in the cases cited, we could be well content to rest this part of our case. The parellel between the cases last cited and Moultrie vs. ~~Simley,~~ Smiley, and the one now under consideration is striking.

In both the decided cases, the bill-holder sought to recover from directors, because of a liabilty created by the charter, for an excess of indebtedness incurred by the corporation while they were directors.

In both cases, the charter expired by limitation before final judgment was rendered and this fact was pleaded in bar of a recovery. But in both cases, the Court very properly held that the individual liability of the directors to the creditors was not a liability of the *corporation*, and that such liability continued, notwithstanding the dissolution of the corporation until satisfied by the directors, who were the debtors, or until the creditor had released them from such liability.

But there are other authorities which go to show that the rule is by no means absolute, that on the expiration of a charter of a corporation or upon its dissolution, all obligations due to or from it, are thereby extinguished.

In the case of Mumma vs. The Potomac Co., 8 Pet., 281, the plaintiff in error recovered a judgment against the Potomac Co. for the sum of $5,000. No steps were taken to enforce the judgment until ten years later, when a writ of *scire facias* was issued to revive it. The case was continued until 1830. In the meantime, the Potomac Co. had surrendered its charter and had become extinct. Mr. Justice Story in delivering the opinion of the Court said that "there is no pretence to say that a *scire facias* can be maintained, and a judgment had thereon against a dead corporation any more than against a dead man. We are of opinion that the dissolution of the corporation * * cannot in any just sense be considered an impairing of the obligations of the contracts of the company * * any more than the death of a private person can be said to impair the obligation of his contracts. *The obligations of those contracts survives*, and the creditors may enforce their claims against any property belonging to the corporation," &c.

This decision has been repeatedly referred to and approved by this Court If it be correct it furnishes a complete answer to the theory, that on the expiration of a charter of a corporation, all debts due to or from it, are extinguished *ipso facto*.

If there be property of the corporation, it can be reached by proper process, and applied towards the payment of its obligations.

If, after the debts are paid, there is any surplus, such surplus belongs to the stockholders and must be distributed to them.

Bacon, et. al. vs. Robertson, et. al., 18 How., 480.

In Curran vs. State of Arkansas, 15 How., 304, the doctrine of the common law that by the dissolution of a corporation its contracts are extinguished, is expressly repudiated on the authority of Mumma vs. The Potomac Co., (p. 310-11.)

Lenox, et. al. vs. Roberts, 2 Wheat., 373, was a suit in equity, brought by persons, to whom, at the expiration of the charter of the Bank of the United States, its effects were transferred, against an endorser of certain promissory notes included among the said effects. The Court did not give any opinion as to whether an action *at law* would lie upon these notes by the *assignee*, but did decide that a suit in equity might be maintained against the endorsers.

This case, therefore, settles the point that the expiration of a charter does not extinguish the liability of *debtors* of the corporation.

This is precisely the case contemplated by Judge Lumpkin in illustration of his theory of the separate relation which stockholders and corporators bear to each other, and which we have quoted above, in the citation from Moultrie vs. Smiley.

From this decision, the conclusion is inevitable that if the liability of stockholders of the Exchange Bank be of the same character as the liability of an endorser, merely, then such liability can be enforced, notwithstanding the dissolution of the corporation.

IV.

The next question to be settled is, as to the effect of the legislation of the State subsequent to the grant of the charter of the Bank, upon the rights of creditors of the Bank.

1. The legislation, by virtue of which it is claimed that the liability of stockholders is removed and annulled, is found in an Act of Dec. 21, 1857, and subsequent Acts of a like character, suspending the operation of Sections 2 and 5 of the Act of Dec. 16, 1852. (Record, ff. 22, 32, 53, 60, 86, 95 and 200.)

2. The legislation which, it is alleged, fails to pro-

vide a remedy to the bill-holder, is the Act of March 13, 1869, which is silent as to the continuation of the liability of stockholders after the forfeiture of the corporate rights and privileges of the Bank.

1. To determine the full effect of this legislation, it is necessary to see what are the provisions of the Act of Dec. 18, 1840, which is made a part of the charter of the Exchange Bank. The Act is found in Vol. XI, Statutes of S. C., p. 143.

The first section provides that the provisions of the Act shall become a part of the charter of the Banks then incorporated or thereafter to be incorporated.

The second section provides:—

"Every Bank which shall suspend the payment of current coin for its notes, or which shall declare a determination to suspend or refuse payment of its notes according to their legal obligation, in its current coin, shall become liable to pay to the State of South Carolina, at the expiration of every month after such suspension or declaration, a sum of money at the rate of five per centum per annum, upon the whole amount of its notes, which shall have been issued, in circulation at the commencement of the said month, and shall continue to pay at the same rate at the end of every month, until the said Bank shall revoke its declaration and shall lawfully redeem its notes when demanded, according to their legal obligation; the said sum of money to be recovered by action of debt, in any Court of competent jurisdiction."

The third section provides that certain monthly returns shall be made by the officers of the Bank.

The fourth section provides a penalty of one hundred dollars to the use of the State for every day's delay to make said returns.

The fifth section confers on the Comptroller-General power to collect the moneys to be paid under Section 2 of the Act.

The sixth section provides for the furnishing to Banks of a copy of the Act.

The seventh and last section relates to banks then in existence, which had suspended specie payment.

The Act Dec. 21, 1857, (vol. 12, St. of S. C., p. 630,) provides that the operation of the *second section* of the above cited Act be suspended until Jan. 1, 1859, subject to certain provisoes, not necessary to enumerate.

The same Act also provided that the provisions of sec. 5 of the charter of the Exchange Bank (among others) should be suspended for the same period.

The fifth section of the charter of the Exchange Bank is as follows:

"It shall not be lawful for the said Bank, except in settlement with other banks, to pay or deliver out in payment or satisfaction of any demand upon it, or by way of loan or discount, any bill, note, check or other paper of any other bank. And for each and every violation of this section, the said Bank shall be subject to the payment of one hundred dollars, to be recovered by action of debt at the suit of the State, and appropriated, one half to the use of the State and the other half to the informer." (Vol. 12, St. of S. C, p. 212.)

The further suspension of the 2d section of said Act of 1840, and of the 5th section of the charter of the Exchange Bank was authorized by Acts of Nov. 13, 1860, (vol. 12, St of S. C., p. 860); Dec. 21, 1861, (vol. 13, p. 42); Feb. 6, 1863, (vol. 13, p. 168) and Dec. 17, 1863, (vol. 13, p. 190.)

The last entitled Act continued the suspension of the said sections until the close of the civil war, and for one year thereafter.

As the second section of the Act of 1840 did not impose any new obligations upon Banks but simply provided that in case a Bank should refuse payment, in current coin, of its notes, it should pay a certain penalty to the State, so long as it should persist in such refusal, and as the 5th Section of the Act of December 16, 1852, simply provided that it should not be lawful for a Bank to pay or deliver out in payment or satisfaction of any demand upon it, &c., any bill, note, check or other paper of any other bank under a penalty of one hundred dollars for every violation of said provision, the suspension of the operation of these two sections could not change the liability of the bank or its stockholders to its creditors.

By suspending the former section, the State surrendered, for the time, its right to exact a certain penalty to which, but for such suspension, the Bank would be liable.

By suspending the latter section, the State impliedly permitted Banks to pay out bills, notes, &c., of other Banks in payment of demands upon it.

Assuming, for the sake of argument, that the holders of bills of the Bank are bound by this legislation, and are to be treated as assenting to the indulgences granted to the Bank as the principal creditor, how are their rights affected?

They still hold the obligation of the Bank to pay them, on demand, the amount of each bill which they hold. They have the right to call at any time upon the Bank for payment of these notes. The Bank can pay the notes in bills of other Banks if the bill-holders are willing to accept them. If the bill holders demand current coin—(or since the war legal tender notes,) the bank is under the legal obligation to pay the coin, or the legal tender notes, and if it refuses, the bill holders have the right of immediate action against the Bank

These rights have not been surrendered by the bill holders, nor have they been surrendered for them by the State.

How then can the stockholders say that the suspension by the Legislature of the right of the State to recover certain penalties, removes and annuls the liability of the stockholders?

But even if we admit that by reason of the suspension of the two sections referred to, there is, in some way, a change effected in the contract made by the Bank to pay the bill holders, yet, if that change were assented to by the stockholder, he is bound by it.

Now, if the corporation took advantage of the Act of Dec. 21, 1857, and its subsequent renewals, then the stockholders must be regarded as assenting to it. Angell & Ames on Corp., §499.

It is manifest that the Acts in question were beneficial to the corporation, since they relieved the corporation of heavy penalties to which they would have otherwise been liable. The assent of the corporation to these Acts is therefore to be presumed under the rule declared in Bank of the United States vs. Dandridge, 12 Wh., p. 70.

If they did not take advantage of these Acts, but continued to pay specie until the time of failure, then the stockholders are unaffected by this legislation.

In no event can it be claimed that by the Acts in question, the risk and liability of the stockholders were increased. These Acts required the performance of no new duties by the corporation, and, if it availed itself of their provisions, surely the stockholders cannot now plead that by the action of the corporation they have been released from their obligations to their creditors. Hatch vs. Burroughs, 1 Woods, p. 445.

2. The next ground of defence is, that because the Act of March 13, 1869, does not provide for the continuation of the liability of the stockholders, after the forfeiture of the corporate rights and privileges of the Bank, therefore the bill holders are without remedy.

The Act of March 13, 1869, is entitled "An Act to enable the Banks of this State to renew business or to place them in liquidation." (Vol. 14, St. of S. C., p. 212.)

The first section of this Act provides "that all the Banks incorporated by the authority of this State and which have, by said authority issued bills of credit known as bank bills, and have failed to comply with said corporate privileges by refusing to pay their bills of credit, and are now thus failing to comply with the provisions of said Act of Incorporation in this particular, and shall so continue to violate said Act until the first day of December, 1869, shall forfeit all corporate rights and privileges, and are forbidden to transact any business as banking institutions: Provided, That the redemption of their bills in United States currency shall be deemed *the fulfillment of their obligations to the holders of said bills.*"

Section 2 provides that the Comptroller-General shall ascertain if the Banks agree to redeem their bills, and if so, to give notice thereof, and if not, then to notify the Circuit Judge, who shall appoint a Receiver, &c.

Section 3 prescribes the duties of Receivers appointed pursuant to preceding section.

Section 4 provides on what terms banks desiring to redeem may do so.

Section 5 provides that Banks resuming business must make certain reports to the Comptroller-General, and fixes the amount of capital of such Banks.

Section 6 repeals all Acts or parts of Acts inconsistent with this Act.

It will be remembered that the Acts providing for the suspension of the operation of Sec. 2 of the Act of Dec. 18, 1840, and of Sec. 5 of the charter of the Exchange Bank, were to be of force until one year after the close of the civil war.

(Act of Dec. 17, 1863, vol. 13, p. 190.)

The war closed as to South Carolina, Aug. 20, 1866. United States vs. Anderson, 9 Wall., 56.

The suspension of the Section in question, therefore continued until Aug. 20, 1867.

After this time, the Banks became liable to pay their bills in coin or legal tender notes.

The Exchange Bank, like nearly, if not all other State Banks, was in fact, insolvent at this time. But its charter was still of force, and the stockholders could take advantage of it at any time they chose.

In 1869, and after the full restoration of the State to its powers and privileges under the Constitution, the Legislature finds that this, and many other Banks have charters in force, but that they are unable to resume business by reason of losses incident to the war. To regulate the terms on which these Banks should renew business, and to provide for the settlement of the affairs of such as could not renew business, the Act in question was passed.

This law was intended to remedy the mischief necessarily attendant upon the existence, in the community, of banks having charters in force, but with no assets to enable them to carry on business.

It said to the Banks, you must pay your bills in full, according to their tenor, or you must go into liquidation. Because it failed in express words to provide that the liability of the stockholders for the redemption of the bills should be continued, it does not follow that such a liability was at an end. The General Assembly was not legislating upon the mutual relations of stockholders to bill holders. It recognized the liability of the banks to pay their debts, and said, if you don't pay and can't pay, then your affairs shall be wound up. But there is no hint that the obligations of individual stockholders upon the bills were to be cancelled by this statute. On this point the statute is silent, and the old law therefore remains in force, since it is perfectly consistent with the later Act.

If, therefore, the old law did give to bill-holders a right of action against stockholders in the event of the failure of the Bank, nothing in the Act of 1869 takes it away.

It is unnecessary to discuss the question whether this Act of 1869 is to be regarded as a legislative forfeiture of the charter of the Bank.

The effect of a forfeiture of the charter according to the theory of the appellants, is the same as the effect of the expiration of the charter by its own limitation, that is, it works an extinguishment of all debts owing to or by the Bank. If, on the expiration of the charter, the debts are not extinguished, then they are not extinguished by the forfeiture, since no corporation would be permitted by its own voluntary acts to gain by a disobedience to law, resulting in a forfeiture, an advantage over its crditors which the law does not permit to a corporation whose charter expires by its own limitation. To hold otherwise would be to hold that the law permits one to profit by his own wrong.

V.

The last question to be discussed, is as to the effect of the Statutes of Limitation upon the obligations of the stockholders to pay the bills of the Bank, provided the stockholders are made liable at all by the charter. To determine this question, it becomes necessary to ascertain (1) what is the nature of the liability of the stockholders and (2) within what time would such liability be barred by the Statute.

But let us first see if the fourth section of the Act of Dec. 16, 1852, forms a part of the charter of the Exchange Bank.

The first six sections of the said Act of 1852, rechartering the Planters' & Mechanics' Bank, relate solely to that Bank.

The seventh section renews the charters of the Union Bank and the Commercial Bank of Columbia with the same *rights, privileges and obligations, and subject to the same regulations and restrictions* as hereinbefore provided, in relation to the said Planters' and Mechanics' Bank.

The eighth section incorporates eight new Banks, one of them being the Exchange Bank of Columbia.

To these Banks are given *the same rights and privileges*, and they are declared to be subject to the same *duties, liabilities, obligations, regulations and restrictions* herein provided for the said Planters' and Mechanics' and Union and Commercial Banks.

Here, then, are eleven Banks, to whom charters are given by one Act. The privileges, liabilities, &c., of one bank are declared to be those extended to the other ten Banks. But because it is not said in express words in the 7th and 8th sections of this Act that the stockholders of the ten banks named therein shall be liable in the event of a failure, it will be urged that *no liability whatever* is imposed upon them by their respective charters.

If there were any doubt as to whether the words *duties, liabilities, obligations, regulations and restrictions* contained in the charter, embraced the individual liability of stockholders, the very fact that the interpretation of the law contended for by appellants would impose on the stockholders of one bank, a burden which the stockholders of the other ten banks chartered by the same Act, would escape, would be sufficient to show its absurdity.

Why should one bank only be singled out and saddled with this liability, while the other ten banks, to whom precisely the same powers and privileges are given and who are subject to precisely the same liabilities, obligations, regulations and restrictions, are entirely relieved from it?

This surely could not have been the *intention* of the Legislature, nor will the language of the statute bear out any such construction.

The charter of the Planters' and Mechanics' Bank confers on the stockholders who constitute it, certain great powers and privileges. It also makes the corporation subject to certain liabilities, obligations and regulations, one of which is, that every person who shall become a stockholder therein, shall be liable and held bound individually, on the failure of the bank, for any sum not exceeding twice the amount of his shares.

When, therefore a corporation is established with the rights and privileges, and subject to all the liabilities, obligations, regulations, and restrictions of the Planters' and Mechanics' Bank, certainly no larger rights or privileges are conferred on the *stockholders* of such corporation than are possessed by the stockholders of the Planters' and Mechanics' Bank.

And this is true whether we regard the Planters' and Mechanics' Bank as a corporation from which certain privileges incident to a complete incorporation at common law are withheld, or whether we regard the stockholders as made subject by statute, to a duty not usually imposed upon corporators.

It is therefore plain that the provisions of Section 4 of the Act of 1852, form a part of the charter of the Exchange Bank of Columbia.

The language of the said section is as follows:—

"That in case of the failure of said Bank, each stockholder, &c., having a share or shares in such Bank, at the time of such failure, or who shall have been interested therein at any time within twelve months previous to such failure, shall be liable and held bound individually for any sum not exceeding twice the amount of his, her or their share or shares."

1. What, then, is the nature of this individual liability?

There may, perhaps, be obscurity in the *words* declaring this liability, but there can be no doubt of the *meaning* of these words. In the case of failure of the bank, each stockholder shall be liable and held bound for any sum not exceeding twice the amount of his shares.

Liable and held bound for what? Certainly for what the charter says the Bank must do. And what does the charter say it must do? It must, among other things, redeem its promises to pay its debts, make certain returns to the State officers, and pay penalties to the State for failure to do so. Pay out its own bills and not those of other Banks, or pay a penalty to the State for a refusal to do so. If, then, the corporation is required to pay out certain moneys and fails to do so, in such case, each stockholder is liable and held bound to do it to an amount not exceeding twice the the amount of his shares.

But to whom are the stockholders liable and held bound? There can be but one reasonable answer. They are liable and bound to pay the *creditors* of the Bank, whomsoever they may be.

It is contended that this liability is a limited one, and is intended only for the protection of the *State*, and to enable the *State* to collect the penalties provided by law in case of a violation of the charter.

But nothing in the context renders such a theory plausible. We must remember that it is the charter of a corporation which we are interpreting, and that where the language of the grant to a corporation is obscure, the construction must be against the grantee. Sedgwick on Stat. and Const., 291-6, and authorities there cited.

We are now dealing with individuals, to whom, as stockholders of a banking corporation, certain great privileges are granted by the State. In the absence of any words imposing a personal liability on these stockholders, they could at no time be held, personally, for any debt or obligation contracted by the corporation after they had paid in the full amount of their subscription to the stock But the Legislature has said to them, "You shall not have this complete incorporation, but you shall be subject, in the event of the failure of your Bank, to pay such sum as may be necessary to meet the liabilities of the corporation, not exceeding, however, twice the amount of your shares." Not the liabilities to the *State* merely, but liabilities to *all creditors* of the corporation.

The language fixing upon stockholders this liability is general, but at the same time it is sufficient to serve as a protection to all creditors, and it is for the corporators to show, if they can, that this general language is intended merely to protect the *State* in collecting such *penalties* as the Bank may incur.

An examination of the Bank charters granted by this State will show that the true meaning of the clause in question is the one for which we are contending.

The earliest Bank charters granted by this State are found in Vol. 8, Stat of S. C., p. 1 and 6, incorporating the South Carolina and State Banks.

Section 8 of these charters is almost word for word like the 4th Section of the charter of the Exchange Bank. The only difference is, that instead of the expression, "previous to such failure," found in the later Act, the earlier one has the expression, "previous to such failure *or bankruptcy*," and the further difference that the later Act used the words, "shall be liable and held bound *individually*," whereas in the earlier Act the words are simply, "shall be liable and held bound."

The words fixing an individual liability upon stockholders, found in the Bank charters granted between 1801 and 1833 are substantially such as we have quoted from the charters of the South Carolina and the State Bank.

Thus we find them in the amended charter of the State Bank (vol. 8, p. 14, §19); in the charter of the Union Bank of South Carolina (Ib , p. 16, §10); the Planters' and Mechanics' Bank of South Carolina (Ib., p. 20, §7); the Bank of Hamburg, South Carolina (Ib., p. 43, §7); and the Commercial Bank of South Carolina—the word *individually* being used after the words "liable and held bound," and the words "or bankruptcy after "failure" and "or subscription" at the end of the clause being omitted (Ib., p. 63, §1, ¶21).

In the charter of the Bank of Cheraw, granted in 1824, the words "or who have been interested therein at any time within twelve months previous to such failure or bankruptcy," and the words "or subscription" are omitted from the clause imposing a personal liability. (Vol. 8, p. 47, §7.)

After 1833 the charters of all or nearly all of the Banks incorporated by the State contained a liability clause, in the same words as those found in the charter of the Commercial Bank of Columbia. See Vol. 8, p. 73, §21; p. 78, §23; p. 84, §21; p. 89, §21; p. 95, §21; Vol. 12, p. 127, §22.

Now, if it be true that the only liability imposed on stockholders by the charter in question, is a liability to pay *penalties* fixed by law for a violation of certain statutory regulations, why is this individual liability imposed by the charter of the Union Bank, (vol. 8, p. 14,) by which charter, no penalty whatever to the State is provided?

The words are intended to mean something, and are surely not intended as a security to the State for penalties which the charter does not impose.

Again take the case of the Planters' and Mechanics' Bank of South Carolina, (vol. 8, p. 18.) This Bank could not have become incorporated until 800 shares of stock were transferred to the Treasurer of the Lower Division for the benefit of the State, (§ 10.)

Section 7 of the charter had provided that in case of the failure of the Bank each stockholder should be liable, &c. Sec. 11 provides "that in case of the failure or bankruptcy of the said Bank, the State shall not (any clause or provision in this Act to the contrary notwithstanding.) be liable or held bound to pay any portion or part of any sum or sums of money, for which the said Bank shall or may fail or become bankrupt."

This special protection extended to the State from liability for "any sum or sums of money for which the said Bank shall or may fail or become bankrupt" shows, beyond a doubt, that the Legislature did consider that, by the personal liability clause of the charter, they had made stockholders liable for all sums of money for which the Bank might fail or become bankrupt.

And a Bank certainly fails or become bankrupt for such sums of money as it owes to its creditors and cannot pay.

In the case of the S. C. Manfg. Co. vs. Bank, 6 Rich. Eq., 227, Chancellor Dunkin in his opinion, refers to the individual liability of stockholders in these words: "As early as 1801, stockholders in Banks, in case of the failure of such institutions, were declared liable for twice the amount of their subscription, or of the value of any stock which they held within twelve months of the failure of the Bank. * * All these precautions are designed *to protect the community* from the danger of a fictitious credit. Having no original resource for the payment of their debts but the capital of the ideal personage created by the charter, the payment of this is scrupulously secured, *and then is superadded a limited individual responsibility* which would not otherwise exist." (p. 236.)

On appeal, the judgment of the learned Chancellor was affirmed.

2. If it be true that the liability of the stockholders is to all creditors of the Bank, within what time would the Statute of Limitations bar actions upon their liability upon the bills issued by the Bank, commonly known as Bank bills?

Had this action been brought against the corporation directly upon these bills, it is well settled that the plea of the Statute of Limitations would not have been a good defence. Morse on Banks and Banking, p. 403.

But the action is brought against individual stockholders, to recover from them the amount of the bills held by complainants, because, by the charter, the stockholders are made liable for their payment.

The individual liability of the stockholders for the payment of the debts of the corporation being a creature of statute, (Pollard vs. Bailey, 20 Wall., p. 526,) an action upon this liability, which accrued subsequent to 1870, would, in South Carolina, have to be brought within six years. Code of Procedure, §114, ¶2.

But this provision does not apply to the present suit, as the right of action accrued prior to 1870 and before the adoption of the code. Code of Procedure, §96.

Before the adoption of the Code, there was no statute fixing the limit within which such actions could be brought. The limitation Act of 1712 (Vol. II, p. 583), provided that actions of debt upon any lending or contract *without specialty*, should be brought within four years. (Sec. 6.)

This statute was founded on the provisions of the English Statute of 21 *Jac.*, 1, c. 16, §3, except that the time within which actions of debt, &c., were to be brought, was limited to *four* instead of *six* years.

Now, an action upon this statute liability, if maintainable at common law against one or more of the stockholders, would have been an action of debt, but it would have been debt upon a specialty or upon an obligation in the nature of a specialty, and to such an action the statute would be no bar.

If, on the other hand, there could be no action at common law, but the creditor could only enforce his remedy in equity, neither then would the statute be a bar to the action, as equity would follow the rule of law in such a case.

The authority most frequently cited in regard to the effect of the Statute of Limitations upon actions founded on a statutory liability is Bullard vs. Bell, 1 Mas, 243, wherein Mr. Justice Story decided that the short bar of six years did not extend to an action of debt against the stockholders of a corporation founded on a statutory liability. The corporation in this case was a Bank, and the stockholder was sued in an action of debt to compel him to pay bills issued by the Bank.

The following is an extract from the opinion delivered in the case:—

"In respect to the first question, the Statute of Limitations of New Hampshire, which, in this respect is a mere transcript of the Statute of 21 *Jac.*, 1, ch. 16, §3, bars 'all actions of debt grounded upon any lending or contract without specialty, and all actions of debt for arrearages of rent,' unless commenced within six years next, after the cause of action accrued. Nothing can be clearer, than that this is not a case of lending; and it would be a very artificial reasoning to consider it a case of contract. It is certainly not a case of express contract, and the most that can, by the utmost straining be asserted, is, that it is a case arising *quasi ex contractu*.

It is, in truth, however, a mere *legal liability created by statute*. * * * Now the present action is founded on a statute which the law deems, for this purpose, a specialty. * * * If the case were new, therefore, we should have no difficulty in over-ruling the plea; but the point has been directly decided by authorities which cannot now be controverted."

This question has been fully discussed in the cases of Lane vs. Morris, 10 Ga., 162, and Thornton vs. Lane, 11 Ga., 459.

In both cases the Court decided after a careful review of the authorities, that an action upon the statutory liability of a stockholder in a Bank was an action in the nature of a specialty, and, therefore not barred until 20 years have elapsed. In the latter case the decision of the Court of Appeals of Kentucky in Bank of U. S. vs. Dallam et. al., 4 Dana, 574, is cited, which fully sustains the conclusions of Justice Story and of the Supreme Court of Georgia.

In the case of Pease vs. Howard, 14 John., 479, decided in 1817, it is said that the statute of limitations of New York is not a bar to every action of debt, but only to those brought for arrearages of rent, or founded upon any contract without specialty. The settled construction of the statute is, that it applies solely to actions of debt founded upon a contract in fact, and that it is not applicable to the case of an action of debt founded upon a statute, because a statute is a specialty.

So in Bouvier's Law Dictionary, title, "Limitations" the rule is declared to be that "debts by specialty as * * liabilities imposed by statute * * are affected only by the general limitation of twenty years." (14 Ed., vol. 2, p. 60.)

Again in the case of Griffin Exr. vs. Heaton, 2 Bail., 58, it is said that actions founded on matters of record are intended to be within the exception, "those by specialty *and all others of a superior nature* being plainly excepted out of the statute." Therefore it is that an action founded on an Act of Parliament, which is termed the highest record, is not within the statute.

Lindsay vs. Hyatt, 4 Ed. Ch., 97, was an action brought upon a bond of the Lombard Association, a corporation of which defendants were members. The stockholders were made liable for the debts of the corporation by the charter. The defendants demurred, and set up the statute of limilations as a bar to the plaintiffs' right of recovery. The learned Vice-Chancellor, (McCoun,) says: "the liability of the defendants arises from the terms of the act of incorporation, which puts them on the same footing as partners or joint dealers contracting a debt, and as if no act incorporating them existed. The bond or sealed instrument of the corporation which the complainant holds, is not the bond or sealed instrument of the defendants which can be declared on as such against them in an action at law. In such an action, the declaration must be in *case* founded on the statute, and the bond, if valid at all, may be given in evidence as proof of the indebtedness of the corporation. The form of the action and the nature of the liability to be enforced, fall within the provisions of the statute which takes away the right to sue within six years."

This case was decided in 1842.

At that time, the statutes of New York contained a general provision limiting the time to six years, within which, actions of accounts, assumpsit or on the case founded on any contract *or liability*, express or implied, could be brought. 2 R. S., 295, §18.

It will be noticed that this New York statute differs materially from that of South Carolina, in that it limits the period within which actions upon *any liability*, *ex-*

press or implied, are to be brought, to six years, whereas the statute of South Carolina is silent as to actions upon express or implied *liabilities*.

While, therefore, the case just cited sustains our view, that the action in this case is founded upon a *statute*, it shows that because of the peculiar phraseology of the Statute of Limitations of New York, the action was barred—as it would be now barred by the Code of Procedure of South Carolina—in six years.

The case of Corning vs. McCullogh, 1 N. Y., 47, is also a decision based on the same statute of limitations.

So the cases decided upon the Massachusetts Statute (R. S. 120, §1, incorporated in General Statutes of Mass. of 1860, p. 771, §1) are inapplicable to this case, because by that statute it was provided that actions of contract founded upon any contract *or liability* not under seal, express or implied, *except such as are brought upon a judgment or decree of some Court of record of the United States or of this or some other of the United States*, should be brought within six years.

Here there is an express exception of contracts under seal, and of actions upon judgment from the operation of the statute of limitations. Every other action founded upon a liability, express or implied, is included within the terms of the statute.

In the case of Baker, et. al. vs. Atlas Bank, et. al., 9 Met., 182, the distinction is clearly drawn between this provision of the statute and the former law, which seems like that of South Carolina, to have been limited to "all actions of debt grounded upon any lending or contract without specialty." In the same case, the decision in the case of Bullard vs. Bell, 1 Mason, 243, is commented on, but no dissent from its conclusions is intimated by the Court, because the statute of New Hampshire under discussion in that case, varied materially from the statute of limitations of Massachusetts.

We do not propose to discuss the question as to whether the liability of the stockholders to the bill-holders is in the nature of a *penalty*, because if there be any liability at all to the bill-holders, we have shown, and every authority cited bears out the proposition, that such liability is a liability founded upon the Statute, and, therefore, is not a liability for a penalty or forfeiture given by the charter to the individual creditor.

The Limitation Act of South Carolina, 1747, (vol. 4, p. 701,) provides that in every case where any penalty, fine or forfeiture whatever, has been or may be inflicted or imposed by any Act of the General Assembly of the Province, and the time of prosecuting the offender against such Act, not thereby provided, no information, action, suit or prosecution shall be had, issued, brought or commenced against the offender for such penalty, &c., unless the same be done within six months, &c.

This is the Statute of Limitations governing this case, if the complainants are seeking to recover a *penalty*. The very language used shows that it has no reference whatever to the liability, which the statute imposes on the stockholders of the Exchange Bank.

We have disposed of all the questions of law raised by the pleadings and determined by the Circuit Court.

We have shown that our bill is in proper form; that its allegations are sufficient; that complainants acquired their bills by due course of trade and for a price equal to their face value; that the charter imposes an individual liability upon the stockholders to pay all the debts of the bank to an amount equal to twice the face value of their shares; that this liability is not extinguished by the expiration of the charter of the Bank; that it has not been removed by subsequent legislation and that the right of action is not barred by the Statute of Limitations.

Now, as to the decrees which were rendered by the Court. There are two of them, one dated April 27, 1874, and the other May 14, 1875. (Record ff. 204-210 and 245-248.) They declare the amount which each stockholder is liable to pay and authorize execution to issue therefor, but the later decree orders that the amounts collected upon such execution be paid into the registry of the Court for distribution under the orders of the Court.

Although the earlier decree makes no such provision, yet the mandate of the writ of execution to be issued in accordance with Rule 8th of the Courts of Equity of the United States, as well as §§995 and 996 of the Revised Statutes of the United States, requires the Marshal to have the money in Court or deposited to its credit, and the Court would, as a matter of course, direct the manner of paying it out to the several parties entitled thereto.

If it be urged that the aggregate amount for which the appellants have been adjudged liable is greater than the aggregate of the bills proven, the answer to this objection is, that the Marshal has only to collect the aggregate amount due the bill holders, and if this be collected from only two or three of the stockholders, the others would have the right to enforce contribution from their fellow corporators.

It will be noticed that no objection has been made to the bill in this case, because there is a defect of parties defendant; nor have any of the defendants disclosed the names of other stockholders who ought to have been made parties.

As to those, therefore, against whom a decree has been entered, the Court had complete and ample jurisdiction, and, as against them, the complainants had a clear right to the decree which has been entered.

Ogilvie v. Knox Ins. Co, 22 How. P. 391.

There may perhaps be a question as to whether the individual liability of the stockholders survives them, and can be enforced against their heirs or personal representatives.

On this point we would say, that if the liability of the stockholder be a liability upon the statute in the nature of a specialty, then such liability does not become extinct on his death.

In 3 Blackstone's Commentaries, 302, it is said, "in actions arising *ex contractu*, by breach of promise, and the like, where the right descends to the representatives of the plaintiff, and those of the defendant have assets to answer the demand, though the suits shall abate by the death of the parties, yet they may be revived against or by the executors: being indeed rather actions against the property than the person, in which the executors have now the same interest that their testator had before."

Now the action in this case is certainly an action arising *ex contractu*, as distinguished from actions *ex delicto*. If the stockholder died before any action was commenced against him to enforce his liability, the plaintiff had still the right to sue his heirs or personal representatives, and to hold them responsible for this debt of the deceased to the extent of the property of the debtor which has come into their hands.

If this were a personal action in which the defendants were liable in damages, as for a tort, it is not pretended that an action would lie. Such were the actions in Martin vs. Bradley, et. al., 1 Caines, 124. United States vs. Daniel, 6 How., 11; and Henshaw vs. Miller, 17 How., 212.

But we have found no case where the right of a person to sue the representatives of the debtor, has been questioned where the action is founded on a claim growing out of a liability such as the stockholders of the Exchange Bank assumed.

The case of Dane vs. Dane Manfg. Co., 14 Gray, 448, in which it was held that a proceeding against a stockholder of a corporation did not survive, was an action against the corporation in which, under the peculiar provisions of the Massachusetts Statute, one Joel Bowker was summoned as a stockholder. By that statute it was provided, that the person or property of the stockholder should not be taken *on an execution issued against the corporation*, unless a summons in the action was left with the stockholder.

The Court held that this provision was for the *living* stockholder, and that no right existed to levy such execution against a corporation, upon the estate of a deceased stockholder.

The case cannot be regarded as contradicting the general rule, that actions *ex contractu* or *quasi ex contractu* do survive in favor of the creditors of the deceased.

To whatever appeals may be made to this Court as to the hardship of enforcing the remedies given these respondents, we make no answer except that we simply ask what the law gives us and what the appellants, by their own obligations, have solemnly declared that we should have.

CORBIN & STONE,
Appellees' Solicitors.

SUPREME COURT OF THE UNITED STATES.

No 216

CARROLL, Et Al.

vs.

J. & T. GREEN.

Supplemental Argument in behalf of Appellees.

In the case of the State vs. Lehre, 7 Rich., 234, the Act of 1852 came before the Courts for a judicial construction. As this case is relied on as one of the authorities in support of Appellants' theory that no individual liability was ever imposed upon stockholders of the Exchange Bank, it is well to examine it carefully.

The case was one which grew out of the action of the commissioners to receive subscriptions to the stock of the People's Bank, in receiving certain illegal subscriptions in excess of the amount of the capital, and in apportioning the stock to the subscribers.

A *mandamus* was asked to compel the commissioners to reapportion the stock, and a writ of *quo warranto* was prayed for against the officers who had been elected by the votes of holders of stock which had been illegally apportioned to them.

Mr. Justice O'Neall granted the rules to show cause. The rules were returnable before Mr. Justice Frost in the Court of Sessions for Charleston District, who, in the course of his opinion, says:—

"By an Act passed by the Legislature in December, 1852, the charters of the Planters' and Mechanics' Bank, of the Union Bank, and of the Commercial

Bank of Columbia, were renewed, and eight new Banks chartered, in a group, of which the People's Bank was one. Respecting the new Banks, it was provided 'that the said Banks shall have and possess the same rights * * * herein provided for the Planters' and Mechanics' Bank, the Union Bank, and the Commercial Bank of Columbia.' By preceding sections of the Act, the Planters' and Mechanics' Bank was declared to be subject to the provisions of the Bank Act of 1840; that its capital stock should be subject to taxation by the State; *that the stockholders, to a prescribed amount, should be individually liable* FOR THE DEBTS *of the corporation;* and that the Bank should not pay out the bills of other banks.

In precisely the same terms which were used in reference to the People's Bank, the Union and Commercial Banks had imposed on them the provisions which were enacted to regulate and restrain the Planters' and Mechanics' Bank." (P. 248.)

"The *Commissioners* cannot derive any power under the provisions of the charter, which declares that 'the said *Banks* shall have and possess the same privileges and be subject to the same duties * * * *herein* provided for the Planters' and Mechanics' Bank.' * * * This clause clearly refers to the restrictions, regulations, &c.; to be subject to the Bank Act of 1840, to be liable to taxation, &c. * *." (P. 252.)

Now it is very evident that the *further restrictions and regulations* which the learned justice had in mind when he used this language, but which he failed to particularly specify here, but included instead in the general phrase, *and so forth*, were those which he had specified in the former part of his opinion which we have quoted, viz: *that the stockholders should be individually liable for the debts of the corporation, and that the Banks should not pay out the bills of other Banks.*

Not one word will be found in this opinion to contradict the theory that the body corporate, meaning the holders of the capital stock of the People's Bank, were not, at the moment of their incorporation, subject to the same restrictions, regulations, &c., as were the holders of stock of the Planters' and Mechanics' Bank.

Judge Frost having dismissed both rules, an appeal was taken to the Court of Appeals.

Mr. Justice Glover delivered the opinion of that Court, sustaining the decision of the Court below.

In his opinion he says: "A plain, literal construction of the eighth section manifests the intention of the Legislature to confer upon the new Banks all the general powers and rights, and to impose all the restrictions and liabilities which had been conferred and imposed by the *original* charters of the Planters' and Mechanics', Union and Commercial Banks, *together with the additional liabilities*, created by the other sections of the Act. The words used in the ninth section still more clearly express this intention. The subscribers are declared to be a body corporate, 'with the same privileges and rights as the stockholders of the Banks whose charters are hereby renewed.' For the charters of the new Banks, this language expressly refers us to the charters of the old. Where words of reference are employed, even in a subsequent statute, they will make a thing pass as well as if it had been particularly expressed. (Wheatley vs. Thomas, T. Raymond, 54.)

It is objected that there are contradictory provisions in the three old charters which cannot be reconciled, and that a construction of the Act which clothes the new Banks with the charters of the old, may be within the letter, but not within the intention of the Legislature. It is generally safer to adopt that construction, which is warranted by the words used, than to conjecture what the Legislature meant. * * *

Some provisions, in the several charters of the then old banks may differ, and rights may be granted to one and withheld from the others; * * * where differences exist, they generally relate to such powers as merely regulate the machinery of Banks, or are found in by-laws, which must necessarily differ * * * *."

From this decision it appears to be settled:

1. That the charters of the eight new banks incorporated by the Act of 1852 contain *all* the provisions of the original charters of the Planters' and Mechanics', of the Union and of the Commercial Banks, which are not contradictory to each other;

2. That thus the said Banks are made subject to *all* the duties, liabilities, obligations, regulations and restrictions imposed by the original charters of said Banks, together with the additional liabilities created by said Act of 1852;

3. That the stockholders of the new Banks have conferred on them *the same privileges and rights*, as the stockholders of said Planters' and Mechanics', Union and Commercial Banks, and (by implication) no other or greater privileges or rights.

In the face of this decision and of the positive declaration of Judge Frost, that it is one of the regulations and restrictions of the charter of the Planters' and Mechanics' Bank, of the Union and of the Commercial Banks, that the stockholders shall be individually liable *for the debts of the Bank*, how can it be seriously argued that there is no individual liability whatever imposed on stockholders, or that Section IV of the Act of 1852, does not form a part of the charter of the Exchange Bank?

In reply to the objections to so much of the decree as relates to the estates of Andrew Wallace and Edward J. Arthur, we would say:

AS TO ESTATE OF ANDREW WALLACE.

The decree of the Court adjudges that Andrew Wallace died in December, 1862, owning four hundred shares of stock of the Bank. The stock was transferred to Trustees named in said Andrew Wallace's will in 1863, who continued to hold the same from that time, and who held it in February, 1865. The names of the said trustees are not disclosed in the answer of William Wallace, nor has said executor filed a plea of *plene administravit*.

The *estate* of said Andrew Wallace is therefore adjudged to be liable upon said stock, &c." (Record, f. 246.)

Now there can be no question but that the estate of Andrew Wallace was *interested* in these shares held by the trustees named in his will. The fact that the legal title was held by trustees does not affect the liability of the estate. By the failure of the executor to plead *plene administravit,* he admits that he ha funds belonging to his testator in his hands. Hug son, 3 Rich., p. 330.

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AS TO THE ESTATE OF EDWARD J. ARTHUR.

The Court adjudged that Martin, the *executor,* had admitted the ownership of stock by his testator, (in 1862) and had not shown that it was subsequently disposed of in any way before February, 1865. No plea of *plene administravit* was filed. (Record, folio 247.)

The Special Master reported that Martin stated in his answer that he was informed and believed that his testator, on December 1, 1862, owned one hundred shares of stock of the Bank. (Record, f. 233. See also f. 104.)

The executor having admitted ownership of one hundred shares by his testator, at the time of his death in December, 1862, (Record, f. 104) and having failed to show any transfer of same by testator before his death or by himself subsequently to his death, the Court very properly adjudged the executor liable in the absence of any plea of *plene administravit.*

On page 35 of Appellant's Brief, paragraph IV, it is said that the charter of the Exchange Bank was held by the Court to have been *surrendered.*

This is not a material point, as the charter of the Bank has expired, but it will appear that this statement rests on no substantial foundation.

In the Circuit Court an exception was taken to the Master's Report, because the Master did not report the facts relating to proceedings had in the Circuit Court * * whereby *on surrender of the charter by the Bank* all creditors were called in, &c.

The facts relative to these proceedings are found in Exhibit "A," (Record, folios 168 to 171,) introduced by Mr. Rion (See Record, f. 161). Not a word is said in this exhibit about a *surrender* of the charter of the Bank.

2. That thus the said Banks are made subject to *all* the duties, liabilities, obligations, regulations and restrictions imposed by the original charters of said Banks, together with the additional liabilities created by said Act of 1852;

3. That the stockholders of the new Banks have conferred on them *the same privileges and rights*, as the stockholders of said Planters' and Mechanics', Union and Commercial Banks, and (by implication) no other or greater privileges or rights.

In the face of this decision and of the positive declaration of Judge Frost, that it is one of the regulations and restrictions of the charter of the Planters' and Mechanics' Bank, of the Union and of the Commercial Banks, that the stockholders shall be individually liable *for the debts of the Bank*, how can it be seriously argued that there is no individual liability whatever imposed on stockholders, or that Section IV of the Act of 1852, does not form a part of the charter of the Exchange Bank?

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The Court adjudged that Martin, the *executor,* had admitted the ownership of stock by his testator, (in 1862) and had not shown that it was subsequently disposed of in any way before February, 1865. No plea of *plene administravit* was filed. (Record, folio 247.)

The Special Master reported that Martin stated in his answer that he was informed and believed that his testator, on December 1, 1862, owned one hundred shares of stock of the Bank. (Record, f. 233. See also f. 104.)

The executor having admitted ownership of one hundred shares by his testator, at the time of his death in December, 1862, (Record, f. 104) and having failed to show any transfer of same by testator before his death or by himself subsequently to his death, the Court very properly adjudged the executor liable in the absence of any plea of *plene administravit.*

On page 35 of Appellant's Brief, paragraph IV, it is said that the charter of the Exchange Bank was held by the Court to have been *surrendered.*

This is not a material point, as the charter of the Bank has expired, but it will appear that this statement rests on no substantial foundation.

In the Circuit Court an exception was taken to the Master's Report, because the Master did not report the facts relating to proceedings had in the Circuit Court * * whereby *on surrender of the charter by the Bank* all creditors were called in, &c.

The facts relative to these proceedings are found in Exhibit "A," (Record, folios 168 to 171,) introduced by Mr. Rion (See Record, f. 161). Not a word is said in this exhibit about a *surrender* of the charter of the Bank.

It is only an assertion of counsel that the Bank surrendered its charter, and not a conclusion of the Court.

CORBIN & STONE,
Appellees' Solicitors.

IN THE SUPREME COURT

OF

THE UNITED STATES.

JAMES P. CARROLL, A. BAXTER SPRINGS, ET. AL.,
STOCKHOLDERS EXCHANGE BANK, COLUMBIA,

vs.

JOSHUA AND THOMAS GREEN.

ARGUMENT OF EDWARD McCRADY, JUNR.,
FOR CERTAIN STOCKHOLDERS.

CHARLESTON, S. C.
WALKER, EVANS & COGSWELL, PRINTERS,
Nos. 3 Broad and 109 East Bay Streets.
1876.

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FOR CERTAIN STOCKHOLDERS.

I. Question in the Case.

The main question involved in this case is as to the statutory liability of the stockholders of the Banks of the State of South Carolina, which were rendered insolvent by the late war. The case is a test one—several suits having been instituted in the United States and State Courts, and now in progress, each brought under the same circumstances by the same proceedings, presenting the same issues, and most of them (indeed it is believed all,) prosecuted by the same persons. The decision in this case will involve the rights of many besides the parties to the record now before the Court; and it is upon this account we are allowed the privilege of presenting this argument.

The credit of no Banks stood higher before the war than those of the Banks of the State of South Carolina, but most of them have since fallen, and fallen together by one common disaster. And so it is remarkable that a provision incorporated in the banking system of the State seventy-five years ago has never been judicially construed; and scarcely less remarkable, that now in construing it for the first time, the Courts will decide only upon such rights as have already accrued, and will lay down no rule for the future, the precise provision in question no longer appearing upon the Statute Book. The right of the parties now claiming the liability of the stockholders must, therefore, rest upon its own merits, uninfluenced by the usual consideration, that the Court, in deciding upon a given case, is at the same time prescribing a rule for the future guidance of others.

The provision under which the plaintiffs' claim is made is peculiar in its terms. It is in these words:

> "That in case of the failure of said bank, each stockholder, copartnership, or body politic, having a share, or shares, in such bank at the time of such failure, or who shall have been interested therein at any time within twelve months previous to such failure, shall be liable and held bound individually for any sum not exceeding twice the amount of his, her, or their share or shares."

The most casual reader of this clause will ask, to *whom* liable? and for *what* liable? and *how* liable? The plaintiffs' answer: "Liable *of course* to the creditors, whoever they may be." "Liable *of course* for the debts of the bank, whatever they might be." "Liable individually, and liable in any form of proceeding or action which may be appropriate under the laws of the State at the time the liability accrues for its enforcement."* But we do not think that these questions can be thus easily answered. If they could, this matter would not have reached this Court.

Let us at once anticipate the course of our argument and suggest the difference between this provision we are to consider, and those of the acts construed in the class of cases: *Ballard vs. Bell, 1 Mass., 243; Corning & Horner vs. McCulloch, 1 Coms., 47; Conant vs. VanSchaick, 24 Barb., 87; Hawthorne vs. Caleef, 2 Wall., 10, and Pollard vs. Bailey, 20 Ibid, 520.* The provisions construed in those cases, we shall show, made the stockholders, in express terms, liable *for the debts*, and *to the creditors*, while the provision we are now to construe declares them liable in case of failure, but does not provide *for what, or to whom?*

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*Argument of Hon. D. H. Chamberlain, before Circuit Court.

We come now, after the lapse of so many years since the provision upon which the liability of the stockholders rest was first incorporated into our banking system, when all those who framed it have passed away, to give it construction. In all that time no case having arisen to make it necessary to examine or expound its meaning, we cannot now resort to cotemporaneous construction, and the question but now arises, does it make the stockholder *contractor for the debts* or *to the creditors* of the bank? It is surely not an imperfect contract (which is really no contract at all) which the Constitution forbids to be impaired. (*Ochiltree vs. Railroad Co., 21 Wall, 249.*) The Constitution protects only such as are perfect, that is, that secure a remedy or action to the party seeking assistance upon which he may rely for redress. But who can claim the benefit of this provision? It does not make the stockholder liable to any creditor of the bank, or for any debt of the bank. He is made liable not for a debt or to a creditor, but he is only declared liable in twice the amount of his shares. Be the debt greater or less, this is the measure of his liability. To what action, and to which of the creditors of the bank can such a liability subject the stockholders? If half the amount would pay the debts he is still liable, in case of failure, to twice the amount of his shares; there is no other limit to his liability. We challenge those who seek to recover upon the theory of "contract" to show a single case in which a provision, such as that we are now construing, was held to make the stockholder liable to a creditor and for a debt of the bank. We make this challenge because we have examined all the cases cited, in which stockholders of a corporation have been held liable to the creditors of a corporation as by contract. Upon reference to these cases, we think it will clearly appear, that in each of them the stockholders have been declared liable by the *express terms* of the enactment *to the creditor*, or *for the debts* of the corporation, or *as copartners*.

II. Rules of Construction Applicable to this Discussion.

In construing the provision of the Statute before us, we must have in mind two familiar rules of construction:

1. We readily assent to the rule that the clause in question must be so construed as to give it some reasonable operation. (*Dwarris on Stat., p. 587.*) That it must not be construed away. That when it says that certain stockholders, in a certain event, "shall be liable and held bound individually," the Statute must be construed so as to give some reasonable operation to these words, and not be so construed as to render them meaningless.

2. That, as it is said, "it is to be inferred that a code of statutes relating to one subject was governed by one spirit and policy, and was intended to be consistent and harmonious in its several parts and provisions. It is therefore an established rule of law that all acts *in pari materia* are to be taken together, as if they were one law, and they are to be directed to be compared in the construction of statutes, because they are considered as framed upon one system and having one object in view." (*Dwarris on Statute, p. 189.*)*

But we have heard it urged, and urged apparently with seriousness, that the various Assemblies which have, from time to time, incorporated the banks in this State, and enacted provisions in regard to them, cannot be supposed to have had in view any general system, or even to have known the previous legislation upon the subject. We might meet this objection to the application of the familiar rules of construction we have just quoted, by referring to the character of the legislators who filled our council halls during the period in which the charters we are to examine were given. But we prefer to meet it upon other grounds.

1. Supposing the fact to have been that those who framed these charters were not competent to legislate upon the subject, then the more reason, we say, that the Courts should strictly construe these enactments by recognized canons. Supposing that the Legislature did not understand the effect

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*The references throughout this argument are to Potter's Edition.

of the laws they were making, it would be but confounding confusion, if the Courts, in expounding them, were to depart from the established rules of construction.

2. But, we think, an examination of the charters will show that the legislators of this State were sufficiently well informed at least in this matter, and wise enough to consult and follow, as far as their own views permitted, established precedent. It will be found that the charters we are to construe were modelled upon that of the Bank of England—that in that charter there *was* a clause imposing the liabilities, and giving the remedies against the stockholders that it is now supposed were given by the clause in question. It will appear that, with that model before them, our legislators chose to impose those liabilities not upon *all* of the stockholders, but upon *some* of them, to wit, the *directors*, and to impose a liability of their own device upon the stockholders generally. It will appear that, for sixty years, the system thus adopted, with modifications from the charter of the Bank of England, was closely followed throughout the banking system of the State, not only in this, but in other particulars.

3. And further, examining the charters of other corporations it will be seen how well the Legislature of this State understood this subject, and understanding it, how variously they chose to arrange the liability of the corporators.

III. History of the Legislation in regard to the Banks in So. Ca.

The better, then, to understand the questions which arise in this discussion, it will be as well briefly to refer to the legislation in regard to the banks of the State, of which the provision imposing the liability upon stockholders forms a part.*

The clause in question is found in the first Act incorporating banks in this State, A. A. 1801, viz: "An Act to incorporate the South Carolina and State Banks." *Vol. VII., p. 1.* This charter was not accepted by the State Bank, and was soon after repealed as to the State Bank, but the same clause is repeated in a supplementary Act of the next year (1802), entitled "An Act to incorporate the State Bank, and imposing certain restrictions on the directors, officers and servants of banks in this State." Ibid, p. 6.

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*It will be borne in mind that we are now only concerned with the legislation as to private banks, and omit, therefore, the charter and amendments to the Bank of the State.

It next appears in the Act incorporating the Planters' and Mechanics' Bank of South Carolina, in 1810. *A. A., Vol. VIII, p. 18.* To this last Act reference has usually been had in the Acts incorporating other banks. The clause has received since that time but one or two minor verbal modifications, which we do not think vary in any material degree its reading. For accuracy, however, we give the version in the A. A., 1810. It is in these words:

> "VII. *And be it further enacted*, by the authority aforesaid, that, in case of the failure of the bank, each stockholder, co-partnership, or body politic, having a share or shares therein at the time of such failure, or who have been interested therein at any time within twelve months previous to such failure or bankruptcy, shall be liable and held bound for any sum not exceeding twice the amount of his, her, or their share or subscription."

The next bank established in the State was "The Bank of Hamburg, South Carolina," in 1822, and this clause was inserted in the Act of incorporation, with the merely verbal alteration in the substitution of the words "*having been*" for "who *have been*" *interested therein*, etc. *A. A., Vol. VIII., p. 43, Section VII.*

In 1824 "The Bank of Cheraw" was incorporated, and this clause inserted, without, however, the words "*or who have been interested therein at any time within twelve months previous to such failure or bankruptcy*," and also omitting the last words "*or subscription.*" *A. A., Vol. VIII., p. 47, Section VII.*

There is another clause found in *this* charter, but in no other, which must not escape us is this connection.

It is in these words:

> "XII. And be it further enacted, etc., that the said corporation shall be bound, at all times, to pay specie for their paper, if demanded. And if the said corporation shall fail so to redeem its notes when presented, *the stockholders shall be liable* for the same in their private and individual character *and an action in such case may be brought against*

*them, their heirs, executors, or administrators, in any Court having jurisdiction, as in other cases, and may be prosecuted to judgment and execution.**

"*The Commercial Bank of Columbia*" was incorporated in 1831, with the clause like that of the Planters' and Mechanics' Bank, save that the time of the liability of the stockholders was limited to *six* months previous to failure; and the words "*or bankruptcy*" and "*or subscription*" left out, and the word "*individually*" inserted thus: "*shall be liable and held bound individually.*" *A. A., Vol. VIII., p. 63, Section 21.*

Another bank was established in the Town of Cheraw in 1833, called "The Merchants' Bank of South Carolina at Cheraw," and in the Act of incorporation the clause appears in the same words as that of "The Commercial Bank of Columbia," just mentioned. *A. A. Vol. VIII., p. 73, Section XXI.*

"The Bank of Charleston, South Carolina," was incorporated in 1834, with the clause in the same words as the last two banks. *A. A. Vol. VIII., p. 78, Section XXIII.*

In 1835 "the Bank of Camden, South Carolina," was incorporated, with similar clause. *A. A. Vol. VIII., p. 84, Section XXI.*

"The Bank of Hamburg, South Carolina," was again incorporated in this year. This time with the clause in question not as it was in the first charter, but in the words of that of "the Commercial Bank of Columbia." *A. A. Vol. VIII., p. 89, Section XXI.*

The next year "the Bank of Georgetown, South Carolina," was incorporated, with a similar clause. *A. A. Vol. VIII., p. 95, Section XXI.*

We may as well observe here, before coming to the legislation of the year 1837, so important in the history of our banks, that two other provisions in the charter of the Planters' and Mechanics' Bank (as well as in those of the South Carolina and State Banks), are found in each and all the charters of the banks above mentioned. And, as we shall have occasion to refer to them hereafter, we give them now, while looking into the history of the legislation upon this subject. They are in these words:

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* The italics throughout this argument are ours.

V. And be it further enacted by the authority aforesaid, That the following rules, restrictions, limitations, and provisions, shall form and be fundamental articles of the constitution of the company hereby incorporated.

1. * * * * *

2. * * * * *

3. * * * * *

4. The total amount of the debts which the said Corporation shall at any time owe, whether by bond, bill, note, or contract, shall not exceed three times the amount of its capital over and above the monies then actually deposited in the bank for safe keeping, unless the contracting of any greater shall have been previously authorized by a law of this State. *In case of excess, the Directors, under whose administration it shall happen, shall be liable for the same in their private capacities, and an action of debt may in such case be brought against them, or any of them, their or any of their heirs, executors or administrators, in any Court in this State having jurisdiction, by any creditor or creditors of the said corporation, and may be prosecuted to judgment and execution, any condition, covenant and agreement to the contrary notwithstanding.* But this shall not be construed so as to exempt said Corporation, or the lands, tenements, goods, or chattels of the same, from being also liable for, and being also chargeable with, said excess

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VIII. And be it enacted by the authority aforesaid, That if the said Corporation, or any person or persons, for or to the use of the said Corporation, *shall deal or trade in buying or selling any goods, wares, merchandize or commodities, whatsoever, contrary to the provisions of the Act,* all and every person and persons by whom any order or direction for so dealing or trading shall have been given, and all and every person and persons who shall have been concerned, after the passage of this Act, as parties or agents therein, *shall forfeit and lose treble the value of the goods, wares, merchandize and commodities in which such dealing have been, one-half thereof to the use of the informer, and the other half thereof to the use of the State, to be recovered with costs of suit.*

The financial revulsion of 1837, found our statute law in regard to the banks with these provisions, but as that convulsion was the result not of individual mismanagement, but of general public causes, though most of our banks, in common with those of the rest of the country, suspended specie payments, no effort was made to hold the corporation, directors, or stockholders responsible. On the contrary, we learn from the subsequent case of the *State vs. Bank of Charleston, 2 McMullan, 452,* that the Governor having communicated to the Legislature the fact of the suspension of specie payments by the Bank of the State, with an exposition of the reasons for the steps they had taken, that his message was referred to the Committee on Ways and Means, who reported that they felt satisfied that the banks were entitled to public confidence, and that this report was concurred in by both branches of the Legislature.

The result was, however, the passage of an act in 1840, entitled, "*an Act to provide against the suspension of specie payments by the Banks of the State.*"

The first section of the Act declared that its provision shall be and become parts of the charters of every bank *already* incorporated within the State, which should accept the same, and also of any bank which should *thereafter* receive a grant renewal amendment or modification of it's charter, unless in express terms dispensed with.

This Act thus becoming a part of the banking system of the State, provided by a second section that every bank which should suspend payment of current coin for its notes, or which should declare a determination to suspend or refuse payment of its notes, *according to their legal obligation, in current coin*, shall become liable to pay to the State at the rate of five per centum per annum, monthly, on the amount of its circulation. Next it provided by its third section for certain monthly returns to the Comptroller-General by each bank in the State, by a schedule therein prescribed, and by a fourth section declared, a forfeiture of one hundred dollars for each and every day's neglect, to make these returns, "*to be recovered by action of debt in any Court of competent jurisdiction.*" It then declared it the duty of the Comptroller-General to take all requisite measures for collecting the amounts of money required to be paid under these provisions, with power to examine the books of the bank. Lastly, it required the suspended banks to give notice to the Governor of their acceptance of these provisions, and in case of the failure to do so, directed that the Governor should forthwith cause legal proceedings to be instituted by the Attorney-General against any delinquent bank, for the purpose of vacating and declaring void its charter. *A. A., Vol. XI, p. 100.*

Another provision materially affecting all the bank charter involved in this discussion, was enacted in a general incorporation Act of 1841. It is in these words. *A. A., Vol. XI., 168.*

XLI. Be it enacted, That it shall become part of the charter of every corporation which shall at the present or any succeeding session of the General Assembly receive a grant of a charter or any renewal, amendment or modification thereof (unless the act granting such charter renewal amendment or modification shall in express terms except it); *that every charter of incorporation granted, renewed or modified, as aforesaid, shall at all times remain subject to amendment, alteration or repeal, by the Legislative authority.*

In 1851 another bank was incorporated in the town of Winnsboro', called "the Planters' Bank of Fairfield, South Carolina." In its charter were incorporated the provisions which we have seen common to the others, viz.: (1.) Of the liability of directors for excess of indebtedness; (*Section XVII.*) 2. Liability for illegal dealing in trading; (*Section XVIII;*) and (3) liability of the stockholders in case of failure; (*Section XXII.*) It was also provided by it that this new bank should be subject to all the provisions of the Act of 1840 relative to suspensions; (*Section XXVII;*) and that the charter of the bank so incorporated should at all times remain subject to amendment, alteration or repeal. (*Section XXX.*) *A. A. Vol. XII, 121.*

About this time the charters of the Planters' and Mechanics' Bank, the Union Bank, and the Commercial Bank, were about to expire; renewals of their charters were desired, and several new banks were applying for incorporation. This lead to the Act of 1852, upon which the proceedings in this case rest the liability of the stockholders of the creditors. Let us examine it then with care.

The first section renews the charter of the Planters' and Mechanics' Bank for the term of twenty-one years from the first of January, 1853.

The second section provides that the said bank should, during the said term of twenty-one years, be permitted to enjoy all the privileges, rights, powers, immunities and benefits which it then enjoyed under its existing charter, and that it should be subject to all the provisions of the Act of 1840, providing against the suspension of specie payments, and also to such regulations and restrictions as the Legislature should from time to time impose.

The third section renders the capital liable to taxation by the State.

The fourth section prescribes the liability of stockholders, in the language first quoted. (*Ante, p.* 2.)

The fifth section prohibits the paying out of the bills of other banks. It is of some importance, and we give the text

V. It shall not be lawful for the said bank, except in settlements with other banks, to pay, or deliver out in payment or satisfaction of any demand upon it, or by way of loan or discount, any bill, note, check, or other paper of any other bank. *And for each and every violation of this section the said bank shall be subject to the payment of one hundred dollars, to be recovered by action of debt, at the suit of the State, and appropriated, one-half to the use of the State, and the other half to the informer.*

The sixth section makes the bills of this bank, while paying specie, receivable for taxes.

The seventh section renews the charters of the Union Bank and the Commercial Bank from the period at which their charters would respectively expire, for the same time, and with the same rights, privileges and obligations, and subject to the same regulations and restrictions as therein before provided in relation to the said Planters' and Mechanics' Bank.

The eighth section, as far as it relates to the banks with which we are now immediately concerned—that is, against which suits have been instituted—is in these words:

VIII. That the following eight banks are hereby incorporated, to be named and known as follows, to wit: One in Columbia, to be known as the "Exchange Bank of Columbia," with a capital, &c.; * * * * * one at Chester, to be styled the "Bank of Chester, South Carolina," with a capital, &c.; * * * * * one at Winnsboro', to be styled the "Planters' Bank of Fairfield," with a capital, &c.; which said *banks* shall have and possess the same rights and privileges, and be subject to the same duties, liabilities, obligations, regulations and restrictions herein provided for the said Planters' and Mechanics' Bank, and Union Bank, and Commercial Bank. The capital stock of the said eight banks shall be divided into shares of twenty-five dollars each.*

The other provisions of the Act, relating to the appointment of commissioners to receive subscriptions, and the organization of the subscribers as corporate bodies, are not material to this discussion. *A. A., Vol. XII., p. 212.*

In 1853 another bank was incorporated, to be styled the "Central Bank of South Carolina," but it did not go into operation, and it is only worthy of note that the same liabilities of directors and stockholders were provided in its charter. *A. A., Vol. 12, p. 237.*

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*We beg to refer to the arguments of Hon. J. P. Carroll, and J. H. Rion upon the point that this section, while it subjected the banks, *i. e*, the corporations, to the duties, liabilities, etc., did not impose the *liabilities* in question upon the *stockholders*.

In this year, by separate Acts, the charters of the "State Bank," (*Ibid, p. 243,*) the "Bank of Charleston," (*Ibid, p. 245,*) the "Bank of Hamburg," (*Ibid, p. 246,*) the "Merchants' Bank of South Carolina," at Cheraw, (*Ibid, p. 248,*) the "Bank of Camden," (*Ibid, p. 249,*) and the "Bank of South Carolina," (*Ibid, p. 251,*) were renewed. In each the stockholders' liability clause was inserted, and each made subject to the provisions of the Act of 1840 in relation to the suspension of specie payments.

In 1854 the "Bank of Georgetown" was rechartered, expressly made liable to the act of 1840, and its stockholders liable in the usual terms. *A. A., Vol. XII., p. 324.*

In 1855 an amendment, unimportant to this discussion, was made to the Act of 1840, in regard to the monthly returns required. *A. A., Vol. XII., p. 405.*

In 1856 a bank was chartered in the town of Sumter, anomalous in its provisions and forming no part of the general banking system. *A. A., Vol. XII., p. 511.*

In 1857, another convulsion disturbed the financial affairs of the country, and the Legislature again interfered in behalf of the banks, and suspended the operation of the second section of the Act of 1840, requiring monthly returns, until the 1st January, 1859. By its second section the operation of the fifth section of the Act of 1852, which prohibited the bank to pay out bills of other banks than their own, was suspended. *A. A., Vol. XII., p. 631.*

To provide, however, against future suspensions, the third section of this Act of 1857, provided that from and after 1st January, 1860, if any bank should have in circulation for more than thirty successive days, three times the amount of gold, silver coin, and bullion, in possession of the bank, as its own property, at its banking house, it should forfeit $500 for each successive day during which such excess should be continued, "*to be recovered by action of debt at the suit of the State,*" and in order that such excess should appear when it existed, it required certain returns to be made to the Comptroller-General, and publication in a form prescribed, and directed how the Comptroller-General should proceed to institute suit for forfeiture under its provision. Another section of the Act, the fifth, prohibiting the banks from issuing or putting in circulation any note of a less denomination than ten dollars. It was repealed the next year, (*A. A. 1858, Vol. VIII., 699.*) but it is worth mentioning, as another instance of the care of the Legislature, to prescribe how the penalty, $100 for every such note, should be collected. It was "*to be recovered by action of debt, at the suit of the State, which the Comptroller-General shall cause to be brought by the proper officer of the State.*" *A. A., Vol. XII., 630.*

In 1858, in an Act purporting to regulate the mode of electing Directors of the Bank of the State of South Carolina, and for other purposes, the provision prohibiting banks from paying bank notes other than their own issue was extended to the agents of the bank, as well as to the bank themselves. And the provision that bank notes should not exceed coin more than three to one, was modified, so as to shorten the period for such excess from thirty days to four weeks. (*A. A., Vol. XII., 698.*) But in 1859, this provision in the Acts of 1857 and 1858 was suspended. (*A. A., Vol. XII., 783.*)

In the commencement of the disturbances which ended in the late disastrous war, November 13th, 1860, the Legislature of the State, anticipating financial difficulties, passed an Act, by the first section of which the operation of these sections of the acts named, *i. e.* those prohibiting banks paying out other bills than their own were postponed until 1st January, 1862, and by the second section suspended the second section of the A. A. 1840, (*i. e.* that providing against the suspension of specie payments by the banks of the State,) until the said 1st January, 1862, and suspending, for the same time also, the fifth section of A. A. 1852, by which the Planters' and Mechanics' Bank was rechartered and the eight new banks were incorporated. *A. A., Vol. XII., p. 860.*

These suspensions of the provisions of the Acts requiring specie payments were continued throughout the war, and specie payments never again made after the 29th November, 1860. (*Donaldson v. Bank, 4 Rich. N. S., 107.*) The banks however, for a short time continued to issue their notes, and to carry on other banking business; but in 1861, or 1862, they ceased to pay out any but Confederate Treasury notes, in which currency the whole business of the country was carried on. The results of the war finally closed their doors.

In view of these facts, the Legislature in 1869 passed an Act entitled: "*An Act to enable the banks of the State to renew business or to place them in liquidation*," which is only mentioned here in its chronological order, but to which we shall have occasion to refer before we conclude this argument.

IV. Analysis of Legislation in regard to Banks in South Carolina.

From this review of the legislation upon the banking system of the State we are the better prepared to discuss the questions that arise under the provision upon which the right of action is rested, viz: *To whom* are the stockholders liable? *for what* are they liable? and *how* are they liable?

The great idea of a charter of incorporation of any body politic is that the body politic so incorporated is created a personage in the eye of the law, and that all the corporators are merged in that body, so that they cease to be individuals in whatever concerns the corporation, and are only in it as necessary parts or members—at the most, members of the material body. Individuality is lost in the one aggregate personification, and the leading idea is that contracts of a corporation are *not* the contracts of the individual members. This is one of the main objects of many incorporations—*i. e.*, that the individual members should not be bound individually by the contracts of the corporation. *Blackstone, Vol. 1, p. 468. Kent, Vol. 2, 268. Angel & Ames on Corp.*, *§591*, *§596*.

In legislating upon this subject it is apparent that the General Assembly had this principle distinctly in view. But while evidently familiar with the rule, it has chosen to impose liabilities not only upon the corporation in its aggregate capacity, but also upon certain parts or members of it. Some for one thing and some for another. In the acts which we have cited we find distinct subjects of liability imposed upon distinct classes.

In each of the charters granted prior to the Act of 1840, and in those granted subsequently, with modifications and additions, we find three distinct subject matters of liability imposed upon three distinct classes in each corporation.

First. A liability in case any bank should owe debts in excess of three times the amount of its capital over and above the moneys actually deposited in the bank.

Secondly. A liability in case any bank should deal, or trade, contrary to the provisions of the Act; and,

Thirdly. A liability in case of the failure of the bank.

(1.) The *Directors* were made responsible in case of the first liability, that is in case the bank should owe more than three times the amount of its capital. (2.) The *corporation, or any person connected with the transaction*, were made responsible in case of the second liability, that is, in case of improper dealing and trading; and (3), the *stockholders* were made responsible in case of the third liability, that is, in case of failure.

It will be observed that in the first two instances the Legislature have gone one step further, and have prescribed not only the subject-matter of the liability, and the persons liable, but it has also provided *how, and by whom*, the liability is to be enforced. (1.) In the first it provided, "and *an action may in such case be brought against them*, (the Directors under whose administration it shall happen,) *or any of them, their, or any of their heirs, executors, or administrators*, in any Court in this State having jurisdiction, *by any creditor or creditors of the said corporation*, and may be prosecuted to judgment and execution." (2.) In the second, the forfeiture is to be "one half *to the use of the informer*, and the other half thereof to this State, to be recovered with costs of suit." But in the third instance, viz, as to the liability of the stockholders for the failure of the bank, each and all of these charters are silent as to by whom, or how, the liability is to be enforced. And so as to the liabilities imposed upon the corporation by the A. A., 1840 and 1853, the provisions are explicit as to the form of action and in its directions for the recovery of the penalties by the parties to whom the penalties are appropriated.

We fully agree that the words of the clause imposing a liability upon the stockholders must have some reasonable operation. But, at the same time, we must recollect that a statute which is to take away the common law ought never to have an equitable construction, (*Dwarris on Statute, p. 240,*) and that by the common law the corporator was not liable for the debts of the corporation (*Authorities supra, p.* 14.) We must remember that he who seeks a remedy by statute must *show* that the statute gives it. (*Dwarris on Stat., p. 147.*) In the long discussion of the subject under consideration, we have heard nothing to show the plaintiff right under the statute, but have been met only with assertion.

We might then decline to discuss a right which no proper effort has been made to establish. We will rather, however, meet the question and endeavor to show that the liability imposed upon the stockholders was not intended to be enforced by the bill-holder or creditor, but by the State in its discretion, and that exercising its discretion, the State has seen fit, under the circumstances of the failure of its banks, a failure arising from no mismanagement on the part of the bank, but from public calamities, the result of its own action, to forego the penalties it had reserved to itself.

V. Theory of Liability of Stockholders to Creditors inconsistent with the Legislation on the subject. Expressio unius exclusio alterius.

Amongst the surest methods of arriving at the solution of any problem is that of *exclusion, viz.*: Given certain ascertained data ; to try first one among several explanations, and if that is not reconcilable with the phenomena under investigation, then to try another ; if that is not, still another, and so on, until by this process of exclusion we arrive at one, of which all that we can say is that it is not inconsistent with the phenomena in question, but acting upon which we often find the true solution of the question under our investigation. Let us adopt this system of "*exclusion*" in this investigation, and inquire just now—not to whom the stockholders are liable—but to whom they are not ?

Then we say the liability of the stockholders to the creditors is surely inconsistent with the legislation upon this subject.

While seeking to find some reasonable operation for the clause in question, let us not forget the other rule that all acts upon the same subject are to be taken together as if they were one law. As was said in *United States v. Collin, 3 Blatch. 325*, the intention which forms the governing principle of the law is to be extracted from the entire enactment, and to ascertain the legislative will, Courts not only search all the provisions of the particular statute, but may look out of that to others in *pari materia*, or of a similar import. For instance, the revenue laws made up of independent enactments, are regarded as one system.

In our investigation into the legislation upon this subject it has certainly appeared that the charters of the Bank of this State have all been granted upon one system. There being in a legislation covering seventy-five years but one anomalous charter, *i. e.* "Bank of Sumter." (*A. A., Vol. XII., 511.*) The exception to prove the rule. Throughout this system, as we have seen, the Legislature have declared three distinct subject matters of liability upon three distinct classes—and that in two of these it has prescribed *who* should bring action for recovery of the penalty and *what action* should be brought. That in the directors' liability clause, the *action of debt* is given to *any creditor or creditors.* That in the clause imposing a liability upon the corporation for illegal dealing and trading *the action is by information*, and half the forfeiture is to *the informer.* That under the Act of 1840, the penalty for the suspension of payment of current coin for notes is to be recovered by *action of debt upon the suit of the Comptroller-General.* That under the Act of 1852, incorporating the Bank, the penalty for paying out the notes of other banks is to be recovered by *action of debt*, one half to the use of the *informer.* That under the Suspension Act of 1857, the penalty for having in circulation notes to three times the amount of coin in its vaults is to be recovered by *action of debt* at the *suit of the State;* and that in another section of that Act (soon after repealed) a penalty was prescribed for issuing notes of less than a certain denomination, which was also to be recovered by *action of debt* at the *suit of the State.*

In the two classes, the liability imposed upon directors, and the liabilities imposed upon the corporation, the Legislature have in each instance been at pains to prescribe *who* should sue, and *how* he should sue. But there is no such direction in regard to the third class. The statute provides that in case of *failure* certain stockholders shall be liable and held bound individually, but it does not say *to whom* or *how.*

"A statute (it has been said) is to be so construed, if possible, as to give sense and meaning to every part, and the maxim was never more applicable than when applied to the interpretion of a statute, that *expressio unius est exclusio alterius.*" *Broom's Maxims, 515, Dwarris Stat. 221.*

Here we have in the same statute the Legislature imposing three distinct liabilities for three distinct subject matters. In two, prescribing who should sue and the form of action, and in the third prescribing *neither* who should sue *nor* the form of action.

Will it be said that the Legislature considered it unnecessary to say who should sue, and how? That "whenever a statute gives or provides anything, the common law provides all necessary remedies and requisites," (*Dwarris Maxims, VII.*) or that "wherever the provision of a statute is general, everything which is necessary to make such provision effectual is supplied by the common law." (*Ibid, X.*) If this is said, it will be but assuming the point in issue. For to give and provide a remedy, implies a person to whom given and for whom provided.

The very question before us is, to whom given and for whom provided? Can we believe that the Legislature, which was so careful in the instances we have cited to prescribe the form of action and the persons to bring it, intended by its silence to leave any, and every one who considered himself aggrieved by the failure of the bank to sue the stockholders in any form of action he thought best? Why, then, did it not leave the creditors to the same implication for their remedies against the *directors?*

"In the construction of statutes, one part must be construed by another; to collect, the Legislative intention the whole must be inspected." (*Potter's note to Dwarris, Stat. p. 188.*) When the Legislature, by the same Act, gives an action to the creditors in one instance, and is silent in another, we must suppose that it means to withhold it.

But our case is still stronger. We have seen the rule of interpretation to be, that it is to be inferred that a code of statutes relating to one subject was governed by one spirit and policy, and was intended to be consistent and harmonious in its several parts and provisions. (*Dwarris Stat., 189.*) And it has been even further held, that recourse may be had for the purpose of collecting the legislative intention to a proviso which has been repealed by a subsequent Act. (*Bank of Savings vs. Collector, 3 Wall, 495.*)

"It is a rule of construction of Statutes," said Lord Mansfield, "that all which relate to the same subject, notwithstanding some of them may be expired, or are not referred to must be taken to be one system and construed consistently." *Rex vs. Loxdale, MS. Report quoted, Bacon Ab'dg. Stat., I. 28.* And *Dwarris* says, p. 192: "according to the received doctrine, a repealed act 'obliterated' from the judicial mind, and 'considered as if it had never passed' will often have more legal import a century later from aiding the construction of subsequent statutes than it ever possessed *in viridi observantia.*"

Let us refer then to the Act of 1824, incorporating the Bank of Cheraw, (Ante, p. 6,) and recollect that the Court is to give effect to every clause, section, and word, if an effect can be given to it, (*Dwarris' Stat., 194*), and that it is not to be presumed that the Legislature intended that any part of a statute should be without its proper meaning, force or effect. (*Cass vs. Dillon, 2 Ohio N. S., 607, Cited Ibid.*)

"The good expositor," says Lord Coke, "makes every sentence have its operation to suppress all the mischiefs—he gives effect to every word in the statute—he does not construe it so that anything should be vain and superfluous," etc. (*Bonham's Case, 8 Rep., 217.*) "It is a safe method of interpreting statute to give effect to the particular words of the enacting clauses. For when the Legislature in the same sentence uses different words, the court of law will presume that they were used in order to express different ideas. So if there be a material alteration in the language used in the different clauses, it is to be inferred that the Legislature knew how to use terms applicable to the subject matter. 'The several indicting and penning on the different branches,' said the Judges, 'in Ederick's case, (*5 Rep., 119,*) doth agree that the maker did intend a difference of the purview and remedies." And see (*Dwarris, 197, 198.*)

Now, as we have seen, the act of 1824, incorporating the Bank of Cheraw, has both these clauses.

First, the general clause (with but a slight modification) under which the plaintiffs sue, in these words:

> VII. And be it, etc. That in case of the failure of the bank, each stockholder, copartnership, or body politic, having a share or shares therein, at the time of such failure or bankruptcy, shall be liable and held bound for any sum not exceeding twice the amount of his, her, or their shares. * * * * * *

And this:

> XII. And be it, etc. That the said corporation shall be bound at all times to pay specie for their paper if demanded. And if said corporation shall fail so to redeem its notes when presented, the stockholders shall be liable for the same in their private and individual character, and an action in such case may be brought against them, their heirs, executors, or administrators, in any court having jurisdiction as in other cases, and may be prosecuted to judgment and execution.

Here then are two clauses in the same Act to which effect is to be given, neither of which it is to be presumed the Legislature intended should be without its proper meaning, force and effect. They cannot mean the same thing, for different words having been used, the Court will presume they were used to express different ideas. From the material alteration in the language used in the two different clauses, it is to be inferred that the Legislature knew how to use the terms applicable to the subject matter. In the quaint language of "the reports," "the several indicting and penning on the different branches doth argue that the maker did intend a difference of the purview and remedies."

These clauses then mean different things, and in interpreting them we must find different operators for their provisions. They both impose a liability upon the stockholders. The one imposes this liability in case of failure—the other in case the corporation fails to redeem its notes in specie when presented. The one imposes a liability for twice the amount of shares held—the other only for the notes refused redemption on demand. A general refusal to redeem notes in coin on demand would undoubtedly have been a failure.* But the bank may yet have refused such redemption in a given case without actual failure. The clauses are then different in these respects.

But there is another difference between them material in this discussion. In the clause providing the liability of the stockholders in case the bank fails to redeem its bills in coin on demand it is provided that "*an action in such case may be brought against them, their heirs, executors, or administrators, in any Court having jurisdiction, as in other cases, and may be prosecuted to judgment and execution.*" But in the clause providing the liability of the stockholders for the failure of the bank, there is no provision for any action for its recovery.

If the Legislature, in enacting these two clauses in the same bill, upon the same subject, and in regard to the same persons—*i. e.*, the liability of the stockholders, had understood that, by declaring their liability in case of failure, they were without apt words to that effect, giving an action against them—would they, in the other case, have been at such care so expressly to provide it? Such a construction would render the provision in the clause in relation to the redemption of bank bills without meaning and mere surplusage. The conclusion cannot be escaped, that, in penning and indicting the different branches of this Act, the maker did intend a difference in their purview and remedies; that there being such material alteration in the language used in the different clauses, it is to be inferred that the Legislature knew how to use the terms applicable to the subject matter. That in the one instance the Legislature *intended* to give an action to the creditor, and that in the other it did *not.* If there be anything in the rule *expressio unius exclusio alterius*

The VII. Section A. A., 1840, and I. Section A. A., 1869, seem clearly to regard a continuance of such refusal as a *failure.* And see argument of Hon. A. G. Magrath.

the giving the action in the one case must exclude it in the other.

This Act of 1824, incorporating the Bank of Cheraw, expired, by its own limitation, before the incorporation of the banks whose charters we are now discussing. But as we have shown it is a proper method of construction—one recognized by the Courts—to refer to an old act, though it has been repealed, to ascertain the meaning of words in a statute. We refer to the Act of 1824 to show that the Legislature, when dealing with this very subject matter, *gave* an action when it *intended* that it should be used.

In *Dr. Bonham's case, VIII. Rep., 236,* it is said:

"It would be absurd that, in one and the same sentence, the makers of the Act should give them a general power to punish without limitation, and a special manner how they shall punish, in one and the same sentence."

VI. Liability to be construed in reference to the principles of the Common Law.

Again, "it is not to be presumed that the Legislature intended to make any innovation upon the common law further than the case absolutely required. The law rather infers that the act did not intend to make any alteration *other* than what is specified, and besides what has been plainly pronounced; for if the Parliament had had that design, it is naturally said, they would have expressed it." (*Dwarris Stat., p. 185.*)

As we have seen by the common law, corporators are not liable for the debts of the corporation. It would seem, therefore, that any clause of a charter of incorporation justly to receive a construction making them liable, should be so clear and explicit as to leave no room for doubt or question. Everything doubtful or questionable should argue in favor of the exclusion of such a construction as opposed to the main and primary object of the charter. The mere idea of a corporation excludes, necessarily, the idea of any personal liability for the contracts of the corporation. The power to create corporations exists in England in the royal authority, and we think we hazard nothing in saying that no charter of incorporation proceeding from this authority ever did impose any individual liability upon the corporators for any of its contracts. We do not know in truth that any corporation ever existed in England (until late years, certainly none) prior to our revolution of 1776, except the Bank of England, in which such individual responsibility was imposed (unless, perhaps, that of the East India Company,) and that was upon an Act of Parliament, most explicit in terms, as we shall have occasion to show hereafter.

In *Crease v. Babcock, 10 Metcalf, at p. 556*, Chief Justice Shaw, in delivering the opinion of the Court, says of this class of liabilities: " But this is a strict statute liability, and as it is created, so it must be limited and governed by statutes ;" and in *Gray v. Coffin and others, 9 Cushing, at p.* 199 the same learned justice, in delivering the opinion of the Court, says:

> " It is very clear that no such liability to an action exists at common law ; and the question is whether it can be established by force of any or all of the numerous statutes of this commonwealth applicable exclusively to manufacturing corporations. To create any individual liability of members for the debt of a corporation, a body politics created by law, and regarded as a legal being, distinct from that of all the member, composing it, and capable of contracting and being contracted with, as a person, is a wide departure from established rules of law founded in consideration of public policy, and depending solely upon provisions of positive law. *It is, therefore, to be construed strictly, and not extended beyond the limits to which it is plainly carried by such provisions of statute.*

One of the earliest statutes of the kind we are considering enacted in this country was that of the State of New York, 1811, relative to manufacturing corporations. It declares :

> That, *for all debts* which shall be due and owing by the company at the time of its *dissolution*, the persons then composing such company shall be individually responsible to the extent of their respective shares of stock in the said company, and no further.

It is this express liability to creditors for debts of a corporation which has ever been considered as the criterion by which to test the question whether the corporators, by becoming corporators, became liable as contractors. We must bear in mind that the corporation is always the original debtor or contractor,* and to make the corporators liable for such debts or contracts is to make them liable for the debts or contracts of another, and not for their own original debts or contracts, which always requires the liability to be shown by the most express and explicit terms, and that in writing. Nor can it be fairly inferred that the Legislature of the State intended such a liability, for in every one of the bank charters the Legislatures have shown that they knew how to create such a liability to creditors when they so intended, to wit: In the provision in regard to the liability of the directors in case of excess of debts over capital, and still more strongly in the provision in the charter of the Bank of Cheraw, in 1824, upon which we have already dwelt. In these instances we see that when the Legislature intended to make any one of the corporators liable for any of the debts of the corporation, they knew how to do so in explicit terms, designating the creditor who might sue and the form of action he should bring. With the directors' clause in the very same Acts and charters now under consideration, and the additional stockholders' clause in the Act of 1824, can any one fail to mark the difference between the liability of the stockholder, under the clause we are considering, and the imposition upon them of a contract with the creditors for the debts of the bank? Under such different words can one profess to see the same meaning? Surely this would be straining hard, to make the stockholders contractors and liable to suits by creditors. Each of the directors must necessarily, by the charter, be a stockholder, and why this particularity in declaring their liability for such debts, and to such creditors, and in such actions, if such particularity was unnecessary? No valid reason can be assigned for the difference, but that the Legislature intended to give an action in the one case and not in the other. That they intended to make the stockholder liable when acting as a director, for certain conduct, in a manner in which he was not to be made liable as a stockholder in case of failure.

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*Story, J., says, in *Bullerd vs. Bell*, 1 Mass , 297–8 : " I agree at once to the position that the bills of the bank are to be considered originally as the debts of the corporation, and note of the corporators, and except from some special provision by the statute, the latter cannot be made answerable for the acts or debts of the former."

But we are not obliged to rely upon these provisions as the only evidence to show that the Legislature knew how to create a liability upon the Corporation which should operate as a contract. The Legislature of this State have shown in numerous charters how well they understood the subject, and how variously they chose to arrange these liabilities, as we think, always showing that wherever they intended to make corporators contractors, by virtue of their membership, they knew it must be done by declaring them liable as *partners*, or *for the debts*, or *to the creditors*, or giving actions to the creditors in explicit terms, so as to exclude all doubt.

In the charter of the *Bivingsville Manufacturing Company*, (A. A. 1838, vol. vii., p. 463); the Corporators were made liable "*as general partners*." That of the *Pendleton Manufacturing Company*, (A. A. 1839, vol. xi., p. 67), made them "*liable as partners at common law*." That of the *Rice Company of South Carolina*, (A. A. 1839, vol. xi., p. 65), made them liable individually and respectively for the *debts* of the Company. Others made them liable for the debts only until their whole capital was paid up, and this was the provision made for Manufacturing Companies in general by the *A. A. 1847, Vol. XI., p. 460 to 462, thus :*

> "Section 4. The members of such Corporations shall be liable jointly and severally for all *debts* and *contracts* made by such Corporation, until the whole amount of capital stock shall have been actually paid in, and no note, bond or obligation given by any Stockholder, whether secured by a pledge of the stock in such Corporation or in any other manner, shall be considered as payment of any part of the capital stock."

Note how clear and explicit this is. In some of the charters there is even greater precision in providing how and when the Corporators shall be liable, as in that of the *Mount Pleasant Ferry Company*, (A. A. 1849, Vol. xi., 580–1), where the provision is that:

> Section 3 That * * * * * * * *
> And any member of the said Company shall be individually liable for all the debts contracted during the time that he or she shall be a member or shareholder * * * in the said Company, to the extent of the par value of his or her shares in the same, and shall be answerable in any action at law against him, notwithstanding the non-joinder of the other shareholders, or any of them, at any time after the return of the *nulla bona* may have been made by the Sheriff of Charleston District upon any execu-

tion issued against the said Company. But nothing herein contained shall be construed to deprive any of the shareholders of any equitable rights against the creditors and other shareholders of the said Company.

We might multiply examples of charters granted by our Legislature, in illustration of their complete familiarity with the mode of declaring the liability of corporators in such terms as to make them contractors with the creditors of the corporation for its debts, by becoming corporators; but we think we have produced enough for this purpose.

VII. Charter of the Bank of England, the model of ours.

It is both interesting and instructive to compare our bank charters with that of the Bank of England in reference to the liability of shareholders. When these charters were first granted, and even now, the great model was and is that of the Bank of England. To this our Legislature, doubtless, had recourse for precedent, and a comparison of our charters with that, will show that the provisions we are considering were borrowed from it. The charter, or rather the authority for the charter is to be found in the *5th and 6th Gul. and Mar. C., 20. Statutes of the Realm, Vol. VI., p. 489.*

The 25th Section is in these words:

"And it is hereby further enacted by the authority aforesaid, That the said corporacon soe to be made, shall not borrowe or give security by Bill, Bond, Covenant, or Agreement, under theire comon seale, for any more, further or other sume or sumes of money exceeding in the whole the sume of Twelve hundred thousand pounds, soe that they shall not owe at any one time more than the said sume, unless it be by Act of Parliament upon Fonde agreed in Parliament, and in such case only such further sumes as shall be so directed and allowed to be borrowed by Parliament, and for such time only until they shall be repaid such further sumes as they shall borrowe by such authority, and if any more or further or other sume or sumes of money shall be borrowed, taken up, lent or advanced under theire comon seale, or for payment of which any Bond, Bill, Covenant or Agreement, or other writing shall be made, sealed or given under the comon seale of the said corporacon, soe to be made then, and in such case all and every person and persons who shall be a member or members of the said corporcon, his and theire respective Heires, Executors and Administrators, shall in his or theire respective, private and personal capacities, be chargeable with and lyable in proporcon to their severall shares or subscripcons, to the repayment of all such moneys which shall be soe borrowed, taken up or lent with interest for the same in such maner, as if such security had been a security for payment of soe much money and interest for the same,

> sealed by such respective member or members of the said corporacon, and delivered by him or them as theire respective Acts and Deedes, in proporcon to theire severall Shares or Subscripcons as aforesaid, and that in every such case an Accon of *Debt* shall and may be brought, commenced, prosecuted and maintained in any of theire Majesties Courts of Record att Westminster, by the respective creditor or creditors to whom any such security under the comon seale of the said corporacon shall be [made,] or his or theire respective Executors or Administrators; against all and every, or any one or more of the persons who shall be members of the said corporacon, or any of theire respective Heires, Executors, or Administrators, in proporcon to theire respective shares or subscripcon as aforesaid, and therein recover and have judgment for him or them in such, and the like manner, as if such security were respectively sealed by the respective person or persons who shall be soe sued, or his or theire respective Ancestor, or Testator or Intestate, and by him and them executed and delivered as his or theire respective Acts and Deedes, any condicon, covenant or agreement to be made to the contrary thereof, in any wise notwithstanding.
>
> And if any condicon, covenant or agreement shall be made to the contrary, the same shall be, and is hereby declared to be void; anything herein contained, or any Lawe, or Usage to the contrary notwithstanding, and in such accon or accons soe to be brought, no Privilegge, Proteccon, Essoign or Wager of Lawe, nor any more than one imparlance shall be allowed."

This section was made to provide for a case of failure, a dissolution, of the corporation when it could not pay its liabilities. It was useless so long as the bank was in good credit and meeting its liabilities, as no one would have occasion to resort to a stockholder, when he had only to go to the counter of the bank to be paid.

Now no one can doubt that this Act was before our Legislature when they framed the charters of the South Carolina, the State, and the Planters' and Mechanics' Banks, and inserted the clauses found in all our bank charters, to wit: (1.) That making the directors liable, when they contracted debts beyond the capital of their respective banks. (2.) That making the bank, and all persons concerned, liable for illegal trading and dealing, as the charter of the Bank of England did by its next section; (*Section XXVI,*) and (3) adopting the language of the section we have just quoted, in the very clause we are considering. For instance, it will be recollected that the last word of the clause, as written in the original charter of the South Carolina, the State, and the Planters' and Mechanics' Banks, are written thus: "liable and held bound for any sum not exceeding twice the amouut of his, her, or their share *or subscription.*" The words "subscription" were struck out in some of the earliest charters, but they remain in the first as an ear mark to show from whence the clause was taken.

It is of the deepest importance to the question we are considering to observe that for the violation of the prohibition similar to that in the clause in the charter of the Bank of England we have quoted, our Legislature has chosen not to make *all* the stockholders liable, as in that charter, but has confined this liability to *such* of the stockholders as were directors and who had united in doing the wrong, and expressly exempted those directors who should dissent and make that dissent known to the other stockholders.

We can hardly conceive of a stronger argument for the position we maintain, than this limitation of liability to the *directors only*, when the precedent before the Legislature made *all* stockholders liable as contractors, nor a more conclusive one than that with the precedent before them, providing actions to the creditor, not only against the stockholders, but against their heirs, executors and administrators, when declaring the stockholders liable they should omit to state to *whom* liable and *how*. Surely when drafting the clause in question with this precedent in view they omitted to provide who shall sue and how; they reserved that point for their own determination when the occasion should arise. Are we then unreasonable in maintaining that this clause does not make the stockholders of the bank liable as *contractors* for the debts of the bank?

VIII. Unappropriated Penalties.

We have seen that the clause upon which the plaintiffs rest their claim has been with but slight modification inserted in every bank charter since 1801, and that while in these Acts the Legislature have been so careful to give action in many instances, sometimes to the State, sometimes to creditors, sometimes to informers, it has been invariably silent as to any action upon this clause.

We are well aware of the rule in *Co. Litt. 159*.

> "That where a statute gives a forfeiture or penalty against him who wrongfully detained or dispossesseth another of his duty or interest, in that case, he that hath the wrong shall have the forfeiture or penalty and shall have an action thereon at common law, and the King shall not have the forfeiture. So that when a private wrong is committed against a statute, the party grieved may have an action to recover the penalty which the statute gives for such breach of it."

And that, under the rule, upon the construction of the Statute, 2 and 3 Ed., 6, 13, which gave a penalty for the substraction of tithes, but did not say by whom such penalty was to be sued for and recovered, that it was held that it might be so sued for and recovered by the party grieved, that is by the parson, vicar, farmer, etc., to whom the tithes belong, and to whom the injury is done by the substraction of them. *Co. Litt. 195, 3 Lev., 290 Esp. Penal Stat., 8.*

But the authority last quoted (Espinasse) so clearly points out, on the same and the next page, the inapplicability of that rule to our present subject that we will quote from it at some length:

> "3 Of a similar description of penal statute with the last, are those *which are of a public nature*, and give a penalty generally for a breach of them, but *without appropriating it to any purpose, person, or persons whatever.*"
>
> "With respect to these the rule is, "that where a penalty is so given and there is no appropriation of it to any person or for any purpose, it is a debt due to the crown and recoverable in the Court of Exchequer, by which mode only it should seem that the penalty can be enforced."
>
> "As where by Stat, 12 Geo., 1 Ch., 35, it is forbidden to burn, place, and stock bricks together, under a penalty of twenty shillings per thousand, and the defendant *was indicted* for so doing. On demurrer it was objected that an indictment would not lie for the offence was prohibited under a penalty, though that penalty was unappropriated; and it appeared on referring to the Act that although other penalties in that Act were given to the bricklayers' company, this was not so, being omitted in the clause which gives penalties to the company for other breaches of the Statute; it was, therefore, held, that it being unappropriated, the penalty of twenty shillings per thousand was a debt to the crown, where the unappropriated penalties should go, and was suable for in the Court of Exchequer, so that an indictment would not lie, though it was contended that the twenty shillings per thousand should regulate the fine on conviction in the indictment, but it was overruled and decided as above.
>
> "From this case, therefore, it is obvious that where a statute is of a public nature, and gives a penalty for the breach of it, without mentioning how it is to be sued for and recovered, no action *qui tam* will be for it, nor is the penalty suable for by any common informer for his own benefit, but the whole goes to the crown; wherein it differs from a statute of a private nature, for there, although no person is mentioned, who is to sue for the penalty, the party grieved, may, by reason of the special injury

> which he receives from the breach of the Statute, and he may recover the penalty as in the case before observed as to action for substraction of tithes."

The case of *Rex vs. Mallard, 2 Stra., 828,* referred to by Espinasse is thus reported:

> Indictment on the Statute of the late King, 12 *Geo.*, 1 c., 35, for burning place bricks and stock bricks together. And on demurrer it was objected by Mr. *Faza Kerley*, that in this particular instance, though a penalty of twenty shillings per thousand is given, yet there is no appropriation of it, or any method prescribed in which it shall be recovered though there is as to all the rest. And upon looking into the Act it appeared this offence was omitted out of the clause which gave the bricklayers' company power to sue for the penalties, and, therefore, the Court held that the *twenty shillings* per thousand was in the nature of a debt to the crown, where the unappropriated penalty would go, and was suable for in a Court of Revenue, and not by indictment. Though *Strange* cited 1 *Mod.*, 34, 1 *Ven.*, 63, and insisted that the twenty shillings ought to be the measure of the fine upon the indictment. *Judicium pro def.*

The Statute we are construing is not dissimilar to that of *12 Geo., 1 C., 35,* upon which the construction just quoted was given. The one provided certain regulations, and imposed certain penalties in order to secure a safe and proper currency for the people of the State, as the other had provided regulations and imposed penalties in order to secure a better building material for his Majesty's subjects. The objects of neither was to suppress crime nor to correct morals; both were intended to secure the safety and convenience of the public in and about the business to which they related. Both were in this sense of a public nature, and each gave a penalty generally for a breach of them, but *without appropriating it to any purpose, person or persons whatever.* The construction then given to *12 Geo., 1 C., 35,* applies with equal reason to the statute under our consideration.

IX. Plaintiffs claim right of action by way of contract.

But if this were not the rule, if it were true that the statute having prescribed a penalty, that an action for the penalty would lie, though the statute had not appropriated, yet even this would not avail the plaintiffs, for their theory is, that they have right of action by way of *contract,* and *not* of penalty.*

We know of no rule by which an action upon an implied contract grafted upon a Statute is presumed or allowed without apt words to that effect. See *Crease v. Babcock,* and *Gray v. Coffin, ante* p. 23.

X. Cases usually relied on by Plaintiff examined.

Cases have been cited by counsel in which it was held that the creditor might proceed, either in equity, or at law, where the charter is silent; and if at law, may elect any appropriate remedy. But, as we have before said, upon an examination of them, we think it will appear that in each case *the creditor was given a right of action*—the Statute being only silent as to the form.

The following cases are usually cited as supporting the plaintiffs' views. Let us examine them.

1. *Bullard vs. Bell, 1 Mason, 243.* (1817.) This case, always cited as the leading case upon the subject, as has been observed by other counsel in this argument,† cannot be considered as an authority. It did not involve the question here. It was properly a bill to compel the stockholders to put back the capital taken from a bank. But, for our present purpose, it will be observed that the provision in that statute upon which the case arose was that if the corporation should at any time thereafter divide their stock previous to the payment of all their bills, or should refuse or neglect to pay any of their bills when presented for payment in the usual manner, the original stockholders, their successors, assigns, and the members of said corporation, should, *in their private capacities, be jointly and severally liable to the holder of any bill or bills issued by said corporation for the payment thereof.*

2. *Allen vs. Sewall, 2 Wend., 327.* (1829.) In this case the

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*The plaintiffs, in their replication, say:

"That the said Section does not impose a penalty, but a liability, upon the stockholders of the said bank, which liability is in the nature of a contract between the stockholders and the billholders of the bank." *Transcript Record, p. 48, fol. 123.*

†Hon. A. G. Magrath.

corporation was a common carrier, and the provision was that the members should be liable individually, *in the same manner as carriers at common law.*

3. *Van Hook vs. Whitlock, 3 Page, 410.* (1832.) The provision in this case was that, *as to all debts* contracted by the company before the second Tuesday of January, 1820, the persons composing the corporation at the time of its dissolution should be responsible in their individual and private capacities, to the extent of their respective shares in the stock of the company at the time.

4. *Moss v. Oakley, 2 Hill, 265.* (1842.) The provision was in this case that the stockholders shall be jointly and severally, personally liable *for the payment of all debts or demands contracted by the said corporation.* The Act did not relate to banks.

5. *Baker and others v. Atlas Bank and others, Met. 9, 182.* (1845.) The statute in the case provided that if *any loss or deficiency of the capital stock* in any bank shall arise from the official mismanagement of the directors, the stockholders at the time of such mismanagement shall, in their individual capacities, *be liable to pay the same.*

6. *Crease and others v. Babcock and others, 10 Met., 526.* (1846.) The statute in this case provided that the holders of stock in any bank at the time when its charter shall expire, shall be liable in their individual capacities for the *payment and redemption of all bills which may have been issued by said bank.*

7. *Harger and another v. McCollough, 2 Denio, 119.* (1846.)
8. *Corning & Horner v. McCulloch, 1 Coms., 47.* (1847.)
9. *Moss v. McCollough, 7 Barb., 279.* (1849.)

In these cases the same Act (to wit, 9th Sec., Act of 1837, N. Y.,) was construed as in *Moss v. Oakley, supra.* These were cases of mining companies.

10. *Conant v. Van Schaick, 24 Barb., 87.* (1857.) This, and the cases argued with it, involved the construction of the 10th Section of the N. Y. General Railroad Act of 1850, which provides that "all the stockholders of every such company shall be jointly and severally liable *for all the debts* due

or owing to any of its laborers for service performed for such corporation.

11. *Lane v. Morris, 8 Geo., 468.*

12. *Thornton v. Lane, 11 Geo., 459.*

13. *Robinson v. Lane, 19 Geo., 337.*

These cases construed, the 11th Section of the Charter of the Georgia Bank, which provides: The persons and property of the stockholders shall be pledged and held bound in proportion to the amount of shares and the value thereof, that each individual or company may hold in said bank, *for the ultimate redemption of the bills or notes issued by said bank in the same manner as in common action of debt.*

14. *Hawthorne v. Caleef, 2 Wall., 10.* (1864.) The provisions in this case were, that the shares of the individual stockholder should be liable *for the debt of the corporation*; and in case of deficiency of attachable corporate property or estate, the provision went on to say the individual property, rights and credits of any stockholder shall be liable to the amount of his stock for *all debts of the corporation* contracted prior to the transfer thereof.

15. *Pollard v. Bailey, 20 Wall., 520.* (1874.) The charter provided that the stockholders should be bound respectively *for all the debts* of the bank, in proportion to the stock held therein.

From this examination it will be seen that, in each case relied on by the plaintiff, it is expressly provided by the statute for what the stockholder is liable. In *Bullard v. Bell,* he is liable *to the holder for the bills* issued by the bank. In *Van Hook v. Whitlock, for all debts* contracted by the Company. In *Allen v. Sewall,* in the same manner *as carriers at common law.* In *Moss v. Oakley, Hager v. McCulloch, Conant v. McCulloch, Moss v. McCulloch, for all debts or demands.* In *Baker v. Atlas Bank, for any loss, or deficiency, of the capital stock.* In *Creese v. Babcock, for the payment and redemption of all bills.* In *Conant v. Van Schaick, for all the debts.* In the *Georgia Bank* cases, *for the ultimate redemption of the bills and notes* issued by the banks, and in *Hawthorne v. Calef,* and in *Pollard v. Bailey, for all the debts* of the corporation.

There can only be the action of debt, or of case upon a statute; but the statute must give an action, that is, the public or State must give an action before it can be acquired.

Bac. Ab. Tit. Actions in General.

> "The design of entering into society being the protection of our persons and security of our property, men in civil society have a right, and, indeed, are obliged to apply to the public for redress when they are injured; for were they allowed to be their own carvers, or to make reprisals which they might do in the state of nature, such permission would introduce all that inconvenience which the state of nature did endure, and which government was at first invented to prevent. Hence, therefore, they are obliged to submit to the public the measure of their damages, and to have recourse to the law and the courts of justice, which are appointed to give them redress and ease in their affairs, and this application is what we call bringing an *action.*
>
> "*Actio nihil aliud est quam jus prosequendi in judicio quod sibi debeter, Co. Litt.*, 285."

Ibid., B.

> "It is clear that for all injuries done to a man's person, reputation, or property, he shall have an action, and that for every right he is to have a remedy, for want of right and want of remedy are the same things. It is also agreed that where a person has several remedies he may choose which he pleases, but he cannot devise, or lay hold of any but those prescribed by the laws of his country; for if this were allowed it would be constituting as many actions as there are men, which would be highly inconvenient. But in this the great difficulty is, *when* a man shall be said to have suffered an injury, or to have such a right as will entitle him to an action, and here the rules established by *that* society of which he is a member must govern."

In accordance with these rules, we have seen how careful our Legislature has been to prescribe in relation to corporations in general, and particularly in relation to the banks *who* should have actions, and *what* action they should have. It is true that the stockholders are made liable for the failure of the bank, but the difficulty with the plaintiffs is to show that they have suffered an injury, or are entitled to a right in the contemplation of the statute. Had the clause imposing the liability upon the *Directors* omitted to mention the form of action to be brought by the creditor, and if the plaintiffs were suing under it for an excess of issue, the authorities cited by counsel as to the right of the creditor to proceed either at law or equity, and if at law, by any suitable remedy might apply.

In the case *Bullard vs. Bell*, so much commented on in this discussion, the rule is thus stated by Mr. Justice Story:

" *Where*, therefore, a statute declares that, under certain circumstances, a stockholder in a bank *shall pay the debt due from the bank*, and those circumstances occur, it creates a direct and immediate obligation to pay it. * * * * Here then the law has declared that the stockholders *shall be liable to pay a specific sum*, and it imposes on them a duty so to do. How then can the court say that debt does not lie, *since there is a duty on the defendant to pay the plaintiff a determinate sum?*"

XI. If this be a case of casus omissus, it cannot be supplied by a Court of law.

If this be a *casus omissus*, it can not be supplied by a court of law, for that would be to make laws. Judges are bound to take the act of Parliament as the Legislature have made it. (*Dwarris, p. 215.*)

This rule has thus been expressed by the courts of this State. *Hull vs. Hull, 2 Strobat's Equity, p. 187.*

> "Where the words of a statute in their primary meaning do not expressly embrace the case before the court, and there is nothing in the context to attach a different meaning to them capable of expressly embracing it, the court cannot extend the statute by construction to that case unless it falls so clearly within the reasons of the enactment as to warrant the assumption that it was not specifically enumerated among those prescribed by the Legislature only because it may have been deemed unnecessary to do so.
>
> "Where the general intention of the statute embraces the specific case, though it be not enumerated, the statute may, nevertheless, be applied to it by an equitable construction in promotion of the evident design of the Legislature. But where this is done it is always presupposed that *such a case* was within their general contemplation or purview when the statute was enacted by them, for if the case be omitted in the statute because not forseen or contemplated it is a *casus omissus, and the court, having no legislative power, cannot supply the defects of the enactment.*"

It is certain that the words of the statute, in their primary meaning, do not expressly embrace the case now before the Court. It is certain that the acts we are construing have given actions against the corporations, against the directors, and in one instance against the stockholders; but that in that now before the Court it has given no action. The Court cannot extend the statute by construction to the case now before it, as they are not so clearly within the reasons of the enactment as to warrant the assumption that it was not specifically enumerated because deemed unnecessary to do so. The design of the Legislature is certainly not *so* evident as to warrant its extension by equitable construction. It cannot in this case be presupposed that the action against the stockholders under consideration was within the general contemplation and purview of the Legislature, and the Court, having no legislative power, cannot supply the defects of the enactment, if there be such.

XII. The liability in this case is in the nature of an unappropriated penalty.

We think then we may safely conclude that the legislation upon the subject is inconsistent, with the explanation that the Legislature intended to give any action upon this clause, in the act, to the creditors of the bank.

But still the clause remains to be construed. Our work is but half done when we have shown what the statute does *not* mean. We must not forget the rule we assented to in the commencement of the argument, viz: that the clause in question must be so construed as to give it some reasonable operation; that it must not be construed away.

There is a construction which gives it a reasonable operation; a construction, in favor of which, if we cannot carry absolute conviction, this much will have to be admitted; that it is consistent with all the legislation upon the subject.

It will be observed that the condition on which the liability of the stockholders is to accrue, is the *failure* of a bank. What is the meaning of the failure of a bank? An able, and, as we think, conclusive, argument will be presented to this Court by other counsel in this cause, showing that suspension of specie payment was the "failure" contemplated by the provision in question.* But whatever it was, that, in the contemplation of the act would be considered a failure, as the natural meaning of the term implies the result would be the failure to perform the objects for which the bank was created, which would necessarily involve the idea of its dissolution. This is not only the natural meaning, but the term "dissolution" is the very term used in the N. Y. Statute of 1811, relative to manufacturing corporations, in the same relation as the term failure occurs in the clause in question, as will be seen upon reference to the extract from it we have already given, (*Ante*, *p.* 23,) and the plain implication in the provision of the act of 1840. If this view be correct there will be no difficulty in giving this clause a most satisfactory interpretation.

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* Argument of Hon. A. G. Magrath.

Upon the dissolution of a corporation all its personal property becomes the property of the sovereign granting the charter, and the generally received opinion is that the sovereign becomes *morally* bound to appropriate this property to the satisfaction of its creditors, if there be any. Now this *moral* duty the Legislature, in case of such a dissolution, to see justice done to the creditors of the corporation, might naturally suggest the idea of providing the means to do so, and to enable them to do this, they might very properly provide for such a liability of the corporators, as in the case of a fraudulent failure would enable them to see that ample justice should be done. By creating such a liability, to be exacted only by themselves, the Legislature would secure the means of having this done according to their own views of justice. If the failure was procured by any improper conduct on the part of the corporators, the Legislature could enforce this penalty as they should see fit. Prescribing a liability broad enough to enable them to make the proper parties liable, and yet making this liability *to themselves only*, they reserved the exercise of a just judgment upon the cause of failure, and also a just discrimination among those who were made liable, and yet many of whom might be perfectly innocent of any participation in the wrong doing.

This could only be done by something in the nature of a penalty, which they could exact or remit, according to their own view of the absolute justice of the case. Now what words would be more apt for this purpose than those employed in this clause? The stockholders are made "liable and held bound" for twice the amount of their shares, the usual form of a penalty, but not the form of the precedent before our Legislature, in the charter of the Bank of England, to wit: "*be chargeable with and liable.*" For what were they made liable? Not for the debts, but only for the double value of their shares. To whom were they made liable? At the granting of a charter there are but two parties, the corporation, (including all the corporators who compose it), and the Legislature granting the charter. The liability must be then (if not otherwise declared) to the Legislature, and no one else. It must be remarked that the provision making all stockholders liable, and all who have been stockholders for a year before the failure, must necessarily embrace many who are innocent. Nay, many who are incapable of making a contract, as infants and married women, and also trustees and executors and administrators, who are only discharging fiduciary and benevolent duties. To make these liable for any misconduct of the bank would be manifestly unjust, unless the Legislature reserved to themselves some power of dispensation from the universality of their legislation in favor of the innocent, which they could not if they made them contractors.

In some of the acts of other States, where stockholders are expressly made liable for the debts or to the creditors of the corporations, such persons, who would otherwise, although only holding as trustees, be liable as corporators, as the legal title of the stock would be in them, are expressly exempted. But we are not without a very clear expression of the sense of our own Legislature in this respect, and that but a few years before the charters we are now considering were granted. By the act of 1847, to define terms upon which manufacturing companies should thereafter be incorporated, (A. A., Vol. XI., p. 461,) to which we have already referred, and in which stockholders are made liable in certain cases, we find this provision:

> SEC. XII. Persons holding stock in such companies, as executors and administrators, or holding by way of collateral security, shall not be personally subject to the liabilities of the stockholders under this act but the person pledging such stock shall be liable as a stockholder and the estates and funds in the hands of such executors or administrators shall be liable in their hands in like manner, and to the same extent, as the deceased testator or intestate, or the ward or person interested in such trust funds,

would have been if they had respectively been living and competent to act and hold the stock in their own names.

Here it is seen that these persons have their liability limited to the funds in their hands, while the same persons holding shares in the banks are made liable personally. The charters of the banks under consideration were granted after the passage of the Act of 1847, just quoted. May we not, then, justly appeal to this Act as affording a clear intimation of the Legislature in inserting the clause in their charter now under consideration? Can we resist the inference that where the Legislature so clearly indicated their perception of the injustice of making executors, administrators and other trustees liable in their own persons, that they could not have intended to violate this view of right and justice, and therefore could not be supposed to have done so without express words?

Then let us ask what else can this be, but a penalty when many different persons, as many as have owned the same shares in the course of the change and traffic of a year, are severally made liable for twice the amount of the shares which have passed through their hands?

The Legislature have declared, and have acted upon a settled policy to restrain and govern and regulate the banks by penalties, to be paid by them into the treasury of the State, and to be sued for if not paid, by the Comptroller of the Treasury. This is the policy of the Act of 1840 and of the act of 1857, and these penalties have been exacted and enforced by suits at law. So that we see clearly that the idea of a penalty for failure of the banks to perform their duties to the public to be exacted by the Legislature is prominent in its legislation, and the frequency with which they have remitted these penalties, shows how necessary it was to justice that this power of remission should be retained in their hands.

XIII. The liability in this case being in the nature of an unappropriated penalty the State has not only forborne, but repealed it.

Having thus not only shown that a construction of the provision in question, which would give to the creditors of the banks an action against the stockholders, would be inconsistent with the whole legislation upon the subject, and with the other provisions of the Acts itself; but having also suggested a construction which is at least consistent with the whole character and the history of the legislation upon the subject, we might pause here, and indeed, if we have succeeded in doing this, it may be that the Court may not care to hear us further, as we will in that case have disposed of the case before them. But as the view we have presented may have suggested the idea that the plaintiffs have a remedy, but have only mistaken the form, that by proper application to the State, proceedings may be devised by which the penalty may be enforced in their favor, we will not be so disingenuous as to close this argument with the suggestion of another proceeding which we believe will be as futile as this.

We have seen that the State has twice before interfered to suspend and to waive the penalties under these charters, upon occasions in which the embarrassment of the bank was brought about by no mismanagement of the directors or carelessness in the stockholders, but from great financial convulsions affecting the whole country, and puzzling its ablest political economist.

It has, we maintain, again interfered in the present instance, and for the same, or like and stronger reasons, has seen fit, not only to forego the enforcement of the penalty, but to relieve the stockholders from it.

We have seen that by the Act of 1841, it was expressly provided, that it should become a part of the charter of every corporation granted or renewed thereafter, that it should at all times remain subject to amendment, alteration, or repeal, by the Legislative authority. (*Ante p.* 9.) The plaintiffs seek recovery from the stockholders under the provisions of the charter of the banks incorporated after the passage of the Act of 1841. It was then a part of their charter that they were to be subject to amendment, alteration, and repeal by the Legislature. The provision applied with as much force to the creditors as to the stockholders, and so if the plaintiff took their bills upon the assurance that the stockholders were liable for them, that assurance was complied with and qualified by the right of the Legislature to modify or repeal it.

It is true as was said by the Supreme Court of the United States, in *Woodruff v. Trapnall, 10 How., 206,* and repeated in *Furman v. Nichol, 8 Wall., 44,* that whatever guarantees are given to notes issued by banks as currency, are to be considered as if on the face of every note; the words of the guarantee were engraved. But over the guarantee of the liability of the stockholders in this case, whatever that liability is, there was also engraved the provision of the Act of 1841, rendering the charters of the banks of the State subject to amendment, alteration or repeal, by the Legislative authority.* It will be shown to the Court by others, that the "*failure*" contemplated by the Act was the suspension of specie payment. It was against this *failure* that the Act was providing when it imposed the liability we are discussing. But under the reservation of the Act of 1841, of the power to modify, alter or repeal this or any other provision of this or any other charter, the Legislature in 1857 and in 1860, sanctioned and authorized this "failure" against which it had provided, and in 1863 actually *prohibited* the banks from doing that which it had in their charters, prescribed a liability upon the stockholders for the failure to do.

But in the Act of 1869, the Legislature still more fully availed itself of its reserved powers to modify, alter or amend. Let us examine this Act. *A. A. XIV., 212.*

First the Title. But before looking at that, let us observe that the Constitution of the State requires that the subject of every act shall be expressed in the title. (*Art. 2, Sec. 20.*)

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*Mr. Justice Field, delivering the opinion of the Supreme Court in *Tomlinson vs. Jessup*, 15 *Wallace, at p.* 457, construing the provisions of the Act of 1841, says:

"The provisions of that law, therefore, constituted the condition upon which every charter of a corporation subsequently granted, was held, and upon which every amendment or modification was made. They were as operative and as much a part of the charter and amendment as if incorporated into them. See also *Tomlinson v. Branch, Ibid, p* 460.

The title of the Act is, "*An Act to enable the Banks of the State to renew business or to place them in liquidation.*" It is clear from the title that the Legislature were aware that the Banks had suspended business, and it appears from it that instead of enforcing liabilities, the object of the Legislature was to permit the banks to preserve their charters and to *resume* business, *or* to place them in liquidation.

Learning from the title of the Act then its purpose and object, let us now examine the act itself.

The first two sections of the Act clearly indicate that the Legislature were fully aware that the Banks of the State, generally, if not all, had failed to comply with their corporate privileges by refusing to pay their bills of credit. They legislated in regard to them as if their actual condition was familiar to all—requiring no preamble nor recital. And without question it was so. The inability of the banks to meet their notes arose from no mismanagement of the directors, but from the legislation of the State itself, from fire and sword, the disastrous results of the war. The Legislature, therefore, instead of declaring the penalties and charters forfeited to the State, and directing their enforcement, were concerned chiefly to afford an opportunity for them to *resume business*, an opportunity of which some were so fortunate as to be enabled to avail themselves. But of which others, and among them, the banks with which we are now concerned, were not.

The Sections of the Act requiring our present attention are in these words:

SECTION 1. Be it enacted, etc. That all the banks incorporated by authority of this State, and which have, by said authority, issued bills of credit, known as bank bills, and *have failed* to comply with said corporate privileges, by refusing to pay their bills of credit, and *are now failing* to comply with the provisions of said Act of incorporation in this particular, and shall so continue to violate said Act, until the first day of December, 1869, shall forfeit all corporate rights and privileges, and are forbidden to transact any business as banking institutions. *Provided*, That the redemption of their bills in United States currency, shall be deemed the fulfillment of their obligations to the holders of said bills.

SEC. 2. That it shall be the duty of the Comptroller General, immediately after the ratification of this Act, to furnish each of the said banks of the State with a copy thereof, and they shall report thereon to the Comptroller General, giving a full statement of all the property, and assets, and liabilities of the bank, and shall furnish a full statement of all their transactions every thirty days thereafter, and for every case of failure or neglect so to report, the officers of the bank shall forfeit and pay twenty-five dollars for each day so failing, to be collected by the sheriff of the county, on the order of the Comptroller General, approved by the Governor, to be appropriated to the use of the State; and if any of the banks agree to redeem their bills, the Comptroller General shall give notice of said agreement in one or more of the newspapers of this State, and shall notify the Judge of the Circuit in which such bank or banks may be situated, of each and every bank failing to comply with the requirements of the first section of this act, whose duty it shall be to appoint a suitable person as receiver of each of the aforesaid banks, who shall, after having filed a bond, with good and sufficient security, to be approved by the said Judge, take charge of the property and assets of the bank.

SEC. 3. That the said receiver shall furnish the Comptroller General with a full statement of all the property and assets belonging to the said bank immediately after receiving the same, and shall proceed to the final settlement of the accounts of the bank in conformity to such rules as the Circuit Court may direct.

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The fourth and fifth sections provided how the banks might resume business.

SEC. 6. That all Acts and parts of Acts inconsistent with this Act be, and the same are hereby repealed.

The Legislature having afforded an opportunity for the banks to resume business, went on to place in liquidation those who could not avail themselves of it. To do this a receiver was to be appointed, whose duty it was to take charge of the property and assets of the bank, and to proceed to the final settlement of its accounts, in conformity to such rules as the Circuit Court should direct. Let us recollect the liability of the stockholders was part of the assets of the bank, which the Legislature could have then enforced. Not one word is said in all this as to the liability of the stockholder. Can it be believed that with all the Acts to which we have had occasion to refer before them, the Legislature overlooked this important element in the final settlement of the accounts of the banks, or having their attention called to it, that had they intended the liability of stockholders should be enforced, they would not have specifically provided how the receiver or their officers should proceed to do so?

The enforcement of the penalty would have been in violation of the spirit of the Act, which, recognizing the cause of their failure, evidently was *first* "to enable the banks of the State to renew business;" and, *next*, to place those that could not in liquidation. That the Legislature was aware that this Act was not in exact accord with the former enactments in relation to the banking system, and intended to act upon its reserved rights, to alter, modify, or repeal, appears from the last clause repealing all Acts, or parts of Acts, inconsistent with its provisions.

We trust, then, that we have shown: (1.) That the plaintiff's theory of the clause imposing a liability upon the stockholders, viz: that it gives a right to a creditor to maintain an action, is inconsistent with the legislations of the State upon the subject. (2.) That the view we have suggested, viz: that the liability is in the nature of an unappropriated penalty, to be enforced duly by the State, is, at least, consistent with them and practicable, and that it gives a reasonable operation to the clause; and (3), that acting upon this view the State, as it had itself caused the ruin of the bank, has again, as it did in 1840, and in 1857, forborne the penalty it had provided, but the enforcement of which it had reserved for its own discretion.

XIV. Mere "volunteer speculators" entitled to no consideration from this Court.

There are other points involved in this case, common to many others now being pressed in suits in progress in the United States and State Courts, upon which we should like to be heard, but we will not further tax the patience of this Court, so indulgently exercised in our favor, save to urge that even granting a liability for the stockholder to a *bona fide* creditor of the bank holding bills received as currency, it will be careful that its process is not traded upon and abused by mere "*volunteer speculators*" who have purchased bills long after they had ceased to be "currency," and had become "stale claims" against the corporation and its assets.

If indeed it were so, as the plaintiff in this case insists, that the liabilities of the stockholders, under the provisions we have been construing, was in the nature of a contract between the stockholders and the bank, and the holders of bills of credit, he is entitled to no consideration from this Court.

Whether the provision in question is to be regarded as we have argued, as a *penalty* to be enforced only in the discretion of the State, and in this case forborne because the State itself was the cause of the failure of the banks, or to be considered as in the nature of a contract, as the plaintiffs claim; beyond question its object was, and *was only* to secure a sound currency and safe deposit; its object was and *was only* to give value to the bank bills which the Legislature permitted to be circulated as money, and safety to the customers deposits; it was *not* to invest an ordinary debt with peculiar sanctity, because that debt happened to be the debt of a bank.

Considering the provision as a *contract*, and not as a *penalty*, as we regard it, arguments will be presented by other counsel which we think will establish conclusively, that even in such a view, bills taken after the known failure of the bank, were taken stripped of all the guarantees with which the law had clothed them for the purpose of circulation as money; that it would be absurd to hold the stockholders liable under this provision for the payment of specie (or its equivalent) by the bank, as the Legislature, when imposing that liability, had expressly reserved to itself the right to modify, alter, or repeal their charters, and had, in the exercise of that reserved power, in 1860, allowed the banks to suspend specie payment, and in 1863 had in effect prohibited such payment; that such bills, purchased after this legislation, passed to the taker, only as an assignee of a *chose in action*, the transfer of which is discouraged by the laws of all civilized nations.

Blackstone, in defining the offence of champerty, says, *Vol. IV., p. 136:*

> "In our sense of the word it signifies the purchasing of a suit, or right, of suing, a practice so much abhorred by our law that it is one main reason why a *chose in action*, or thing of which one hath the right, but not the possession, is not assignable at common law, because no man should purchase any pretence to sue in another's right. These pests of civil society that are perpetually endeavoring to disturb the repose of their neighbors, and officially interfering in other men's quarrels, even at the hazard

of their own fortunes, were severally animadverted on by the Roman law, *qui improbe*, etc., and they were punished by the forfeiture of a third part of their goods, and perpetual infamy."

Lord Abinger, in *Prosser v. Edmonds, 1 Y. & C., at p. 497*, observes of the matter then before him:

> "In the present case, it is impossible that the assignee can obtain any benefit from his security except through the medium of the Court. He purchases nothing but a hostile right to bring parties into a Court of Equity as defendants to a bill filed for the purpose of obtaining the fruits of his purchase.
>
> * * * * * * * * * *
>
> "What is this but the purchase of a mere right to recover? It is a rule, not only of our own law, but of that of all countries that the mere right of purchase shall not give a man a right to legal remedies. The contrary is no where tolerated, and is against good policy.
>
> "All our cases of maintenance and champerty are founded on the principle that no encouragement should be given to litigation by the introduction of parties to enforce those rights which others are not disposed to enforce. There are many cases where the acts charged may not amount precisely to maintenance or champerty, yet which upon general principles, and by analogy to such acts a Court of Equity will discourage the practice."

The Supreme Court of the United States has, on more than one occasion, emphatically expressed its condemnation of conduct partaking of the character of champerty. In the case of the *Propeller Mohawk, 8 Wall., 162*, Mr. J. Nelson, delivering the opinion of the Court adverse to the plaintiff, says:

> "The suit in the present case has been instituted by *a volunteer on a speculation*, and we are not sorry that, upon the application of the principles of law governing it, the experiment must fail."

And again, in a very recent case, *Marsh v. Whitmore, 21 Wall, 184*, Mr. J. Field observes, with disapprobation, the facts "lead to the inference that the present suit was prompted more by a *spirit of speculation* than any sentiment that injustice had been done to him."

Who the nominal plaintiffs in this case are we do not know. The Referee reports (*p. 68 of Transcript, folio 177,*) that in their testimony, taken by commission, they declare that the entire amount of the bills proved by them were *obtained* for value; that none of them *were taken at a cost less than their face values, excepting some twenty or thirty dollars,* *which were purchased by them,* in their banking house, at a figure which they cannot now remember, and that all of them were owned by them *prior to January 1st, A. D. 1870.*

We wish only to call attention, in passing, to the fact that while these nominal plaintiffs allege, in their complaint, that these bills they hold came into their hands in the due course of trade, (*p. 2 Transcript, folio 4,*) that their own evidence shows not that they were so received as money, but that they were "*obtained*" and "*taken at a cost.*" They do not say that they had come to their hands before the 1st December, 1862, when they themselves allege that the bank failed, but only prior to January 1st, 1870. But our concern is more immediately with the real instigator, as we believe, of these proceedings—at any rate with the person whom the record shows is the most interested in them—the actual, if not the nominal, plaintiff in every suit of the kind, whether in the United States or State Courts of South Carolina; the person whose name is familiar to the Courts in every Southern State, from Virginia to Mississippi, as the " volunteer speculator " upon the bills of broken banks; one who is at one and the same time suing in the United States Courts as a citizen of Pennsylvania, Virginia and South Carolina.

The decree in this case* (*p. 79 Transcript, Folio 204*) directs the clerk to enter judgment *for the complainants* to the amount of their respective bills proven in this case as thereinafter stated, and ranking Harvey Terry as a complainant ; the decree gives him judgment and awards him execution for the bills he proves in his own name and in the names of others for *his use* to the amount of $24,002.50 of the aggregate amount of $52,607.50, for which judgments are to be entered. The nominal plaintiffs have judgments and execution, but for $5,325. Nearly all the rest of the bills, to wit, $16,560, it will be observed, are set up by the stockholders sued, as counter claims. Of the $36,047.50, to be paid by the stockholders, the plaintiffs and Mr. Terry have judgment for $29,347.50, and of this Mr. Terry has (in his own and in the name of others) $24,002.50. We are right then in saying that Mr.

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†A very slight consideration will show that it will be impracticable to carry out this decree as it now stands.

Terry is the principal party interested in this case. What does he say in regard to the bills he has proved and upon which he has judgment?

In a report of the Special Master, which opens with an announcement that the reference, at which he took the testimony he reports, was held without notification to the other counsel in this case, Mr. Terry testifies. (*Transcript, p. 70, folio 183, 184.*)

> I saw Mr. Joseph S. Wright buy the bills last above named, as being in package No. 3, (*i. e.* a package just proved for his, Terry's use.) They were bought from J. J. Nicholson & Sons, of Baltimore, a respectable house, doing a large banking business. The bills were bought in the summer of 1872, the consideration was good money, a large amount, but less than the face value of said bills * * * * I advised Mr. Wright to purchase these bills, and I never would have done so unless I believed them to be the bills which had not been stolen.
>
> The bills owned by me individually, amounting to three hundred and fifty dollars, I bought from sundry different persons in small amounts, from five dollars upwards. I bought all of them since the year 1870, but do not recollect the exact date of the purchases.

At another reference, the report of which again commences with the announcement that it was held without notice to the defendants, Mr. Terry proves another lot of bills, some of which he testifies were purchased since 1870, and that some he saw purchased for his use in 1872. (*Transcript, p. 72, f. 186, 187*). It will be observed that the suit was commenced 18th June, 1872. (*Transcript, p. 6, f. 15*), so that the bills purchased in the summer of 1872, were bought after the suit had commenced.

Now it is in evidence in this case that the Bank ceased issuing its bank notes in 1861 or 1862, that "after that time, as the bills were received they were retained and from time to time were burned." (*Transcript Record, p. 62, 63, f. 163.*)

In *Donaldson v. Bank, 4 Rich., N. S., at p. 113*, it is said that the date of a bank note is of little or no weight in determining the date of its issue, that in ordinary banking business such notes are usually paid into the banks and reissued again and again, and that whenever they are thus reissued by the bank, a new contract is made. This is ordinarily so, but it must be remembered the notes of the Banks of the State were not issued after 1861 or 1862. The plaintiffs *allege* that the bank had failed some time *previous* to December, 1865.

Here then we have Terry, the co-plaintiff, as he is to be considered, ten years after the notes were issued, and the bank had failed, not coming by these bills as currency in the due course of trade, but buying them for less than their face value.

He is careful not to say what he gave for them, but Baldwin, who was the Receiver, testifies that Mr. Terry sold some of these bills to him at prices ranging from twenty cents to twenty-five cents, (*Transcript Record, p. 61, f. 160*), and it is quite certain that he bought them at a less price than that at which he sold them.

But not only does Mr. Terry go about buying bills of broken banks upon speculation, the benefits of which are to be derived to him, at the cost to the country of the time and expense of the Courts upon whose mandates he is trading, the gain of which he is to have at the cost of ruin to innocent persons, to women and children, and to institutions of learning and religion, but he busies himself to persuade others to do so. *I advised Mr. Wright to purchase these bills*, he unblushingly testifies.

It is undoubtedly well settled law that guarantees given to bank notes to induce their circulation are to be regarded as engraved upon their face, (*Woodruff vs. Trapnall, 10 How. 206*), and that not even the Legislature can impair their obligation (*Furman vs. Nichol, 8 Wall, 50,*) while these notes are in circulation. But will the court aid and encourage those who make it their business to hunt up bills long out of circulation for the purpose of speculating upon the liabilities of others? The executioner and the informer are necessary agents for the suppression of crime, and the law however reluctantly rewards them for their work, but it brooks no such characters in its civil courts. It turns but a dull and cold ear to a volunteer of any sort, but he who would convert its sacred halls into a mart for speculation upon its mandates, it drives from its doors mulcted in costs as the proper return upon his venture.

Representing parties interested in the question involved in this discussion, but not now before the Court. We concur in the foregoing argument, and urge its consideration upon the Court.

Charleston, S. C., January, 1876.

EDWARD McCRADY.
JAMES B. CAMPBELL.
C. G. MEMMINGER.
PORTER & BRAWLEY.
SIMONTON & BARKER.
SIMONS & SIMONS.
PRESSLEY, LORD & INGLESBY.
C. R. MILES.
W. G. DESAUSSURE.
BUIST & BUIST.
A. T. SMYTHE.

8

IN THE SUPREME COURT
OF
THE UNITED STATES.

JAMES P. CARROLL, and OTHERS,
STOCKHOLDERS EXCHANGE BANK, COLUMBIA, SO. CA.,
APPELLANTS,
VS.
JOSHUA AND THOMAS GREEN,
AND OTHERS,
APPELLEES.
(No. 216.)

ARGUMENT OF THEODORE G. BARKER,

FOR APPELLANTS, IN THE CASE OF

WILLIAM GODFREY, AND OTHERS, VS. HARVEY TERRY, ET AL. (No. 651.)

Filed by permission of the Court, in CARROLL *vs.* GREEN.

CHARLESTON, S. C.
WALKER, EVANS & COGSWELL, PRINTERS AND STATIONERS,
NOS. 3 BROAD AND 109 EAST BAY STREETS.
1876.

IN THE

SUPREME COURT OF THE UNITED STATES.

WILLIAM GODFREY AND OTHERS, APPELLANTS,

vs.

HARVEY TERRY AND OTHERS, APPELLEES.

BRIEF ON BEHALF OF APPELLANTS.

Preliminary Notes as to Defects Patent on the Record in Carroll vs. J. & T. Green.

By permission of the Court, this Brief, prepared in reference to the Record, in the above entitled case, is filed in the 1
case of *Carroll, et al. vs. J. & T. Green.*

The Record, in either case, shows that the proper and necessary parties are not before the Court. In a kindred case, before the Supreme Court of South Carolina, *Terry vs. Calnan*, decided March 16, 1876, the Court says:

"The judgments appealed from were prematurely pronounced. The liability of the defendants, if any, is dependant on the fact of their having been stockholders at the time of the failure of the Bank, or within twelve months preceding
it. The judgment does not fix the day of failure of the 2
Bank, and, therefore, does not afford the requisite means of ascertaining whether the defendants are chargeable as stockholders."

In the above ruling, as in a former one, (4 So. Ca. R., 508,) on a demurrer for want of parties, (as also in *Donaldson vs.*

Bank, 4 So. Ca., 113,) the Supreme Court of the State have
expressly reserved the main question of defendants' liability.
It is presumed that this Court will, likewise, postpone the
consideration and decision of the main question involved in
3 all the South Carolina Bank Charters, which affects the rights
of all the stockholders of all those Banks, until a Record
shall be brought before it, complete in all respects, and upon
which a just judgment can be rendered.

In *Carroll vs. Green*, the Record shows the following fatal
defects, going to the foundation of the exercise of the equitable
jurisdiction invoked.

The claim is based upon the clause in the Bank Charter,
which provides (Record, p. 2, fol. 4,) "that in case of the
failure of the said Bank, each stockholder, copartnership, or
4 body politic, having a share or shares in such Bank at the
time of such failure, or who shall have been interested therein
at any time within twelve months previous to such failure,
shall be liable and held bound individually for any sum not
exceeding twice the amount of his, her, or their share or
shares."

Paragraph V. of the Bill (Record, p. 2, fol. 6) alleges, "that
the Exchange Bank of Columbia, *some time previous to first
day of December, 1862*, failed to pay their bills of credit, known
as bank bills, and continued so to fail to pay their bills of
5 credit up to the first day of December, 1869."

Paragraph VII. (Record, p. 3, fol. 7) alleges, "That *on the
first day of December, 1862, and, indeed, at an earlier period*, the
said Exchange Bank of Columbia *had failed*, being then indebted
to an amount far exceeding its assets."

Here appears, at the outset, in the statement of complainants'
case, an utter uncertainty as to the time, as well as
cause, of failure, the certainty of which is essential to the
plaintiffs' title to relief and to the ascertainment of the proper
defendants, viz: the individual "stockholder, copartnership,
6 or body politic, having a share or shares in such bank
at the time of such failure, or who shall have been interested
therein, at any time within twelve months previous to such
failure." "An original bill, praying the decree of the Court
touching rights claimed by the person exhibiting the bill, in

opposition to rights claimed by the person against whom the bill is exhibited, must show the rights of the plaintiff, or person, exhibiting the bill; by whom and in what manner he is injured; or in what he wants the assistance of the Court; and that he is without remedy," etc. *Mitford's Pl., 38.*
"In setting out the title on which the case rests, defendant 7
should be distinctly informed of the nature of the case he is to meet." *Mitford's Pl. Note on Parties, p. 408. Story's Eq. Pl., 257.*

The date, first alleged, is "some time previous to the first day of December, 1862," when, it is said, the Bank failed to pay their bills of credit. The next is, "That on the first day of December, 1862, and, indeed, at an earlier period, the Exchange Bank of Columbia had failed," both equally vague and indefinite.

From neither of these allegations can defendants know, 8
what case they are to meet, nor can the Court determine, what was the date relied on by the plaintiffs, at which the failure occurred, and previous to which, the "twelve months," is to be calculated, according to the charter, so as to ascertain what persons held shares during the period, and, by virtue of their alleged contract (privity) with complainants, should be made parties defendants. All those persons, whoever they may be, within the alleged period, are interested in the questions involved, first, of their own liability to complainants; and,
second, of the contributory liability, *inter sese*, of the defend- 9
ants, who may be so found liable, and who are, therefore, necessary parties.

The IX Paragraph of the Bill increases the uncertainty and confusion of parties liable. It alleges (Record, p. 3, fol. 9), "That the following persons were holders of shares of said bank *within twelve months previous to the said failure, or* became holders of such shares, *subsequent to such failure and before the first day of December, 1869.*"

Here we have a new set of defendants added, so that the
various classes of persons charged at one and the same time 10
in the bill, are:

1. Those who at some time previous to the 1st December, 1862," were shareholders.

2. Those who "on the first day of December, 1862," were shareholders.

3. Those who "indeed at an earlier day" than "1st December, 1862," were shareholders.

4. Those who at any time "within twelve months" previous to "the first day of December, 1862," were shareholders.

11 5. Those who "at any time within twelve months" pre-
vious to that day, which, in Paragraph V., is itself said to be
"some time previous to 1st December, 1862," were share-
holders.

6. Those who at any time "within twelve months" previous to that other date, which, in Paragraph VII., is said to be "indeed at an earlier period" than "1st December, 1862," were shareholders; and lastly,

7. Those who "became holders of such shares subsequent to such failure, and before the first day of December, 1869."

12 It is clear that those who may, upon ascertainment, be
brought within each of the above seven categories, or periods
of time, cannot all be liable to complainants.

If any one or more of the seven periods be assumed as determining the class of shareholders, who are the proper and necessary parties defendant, those who, do not come within the category or period assumed, are unnecessary and improper parties.

Again, if a period is assumed by the complainants, all who
held shares within such period are necessary parties, and
13 must be made defendants either by subpœna, or publication,
because if some are liable, all are liable, and each defendant
has a claim to have his proper co-defendant brought, by the
proceeding, within reach of the judgment of the Court, so
that each may make his just contribution.

The omission of one party interested involves the judg-
ment of the Court, on the question affecting his right, without
a hearing, and involves the loss of that aid which each de-
fendant has a right to ask of the Court. *Pollard vs. Bailey,
20 Wallace, 525; Crease vs. Babcock, 10 Metcalf, 532, Greer
14 vs. Breed, Ib. 575; Mandeville vs. Riggs, 2 Peters, 482; Shields
vs. Barrow, 17 How. 130; Conn vs. Penn,* 5 *Wheaton, 424.*

In Paragraph IX., we find a list of names of shareholders alleged to be liable, with amounts of respective liability of each; among them (Record, p. 3, fol. 8) is that of one who is thus named:

"*Jacob E. Lyon held two hundred (200) shares, worth $5,000.*"

This stockholder was not served with subpœna, and not made a party by publication.

Is he to be suffered, at the option of complainant, to escape, while others, alleged to be stockholders with him, are 15
made to pay? Shall his co-shareholders be made to pay the complainants, and lose the aid of his proper contribution to the fund?

Again, on the same list we find:

"*William Scarborough, since deceased, of whose estate Miranda Scarborough is Administratrix, held fifty shares worth, $1,250.*" The return of the Marshal on the subpœna writ (Record, p. 7, fol. 17) is thus, "*Miranda Scarborough, N. E. I., out of State; no place of residence.*"

If the administratrix of the estate of William Scarborough 16
was out of the State, she should have been made a party by publication, or administration should have been taken out, or the case should have been brought in the State Court. By ignoring her, and proceeding against the other persons, the estate of Scarborough is, at the will of complainants, released from the liability, and his co-sureties lose the just contribution which they would be entitled to claim from the estate. It is no answer to say that the United States Court cannot bring the absent defendants before it. If the United States Court cannot (as required by *Pollard vs. Bailey*, 24 Wallace, 17
525,) "bring before it all the necessary parties and adjust all their rights," then the consequence follows which did in the case of *Shields vs. Barrow*, 17 How., 130, where it was ruled that "the Circuit Court could make no decree, as between the parties originally before it, so as to do complete and final justice between them, without affecting the rights of absent parties," and the jurisdiction failed.

The prayer of the bill perseveres in the same vagueness and indefiniteness, (Record, p. 4, fol. 11,) as we have noted above.

"And, further, that the said defendants, stockholders, and 18
the legal representatives of stockholders of the said Exchange

Bank of Columbia, be decreed to pay unto your orators the sum of fifty dollars, upon each share of the capital stock held by them respectively, on the first day of December, 1862, or within twelve months previous thereto, or who acquired such shares between the first day of December, 1862, and the twenty-second day of December, 1869, or such a portion of such sum as shall be sufficient to pay the just and legal demands of your orators."

19 Here is the principle of proportionate liability of defendants recognized by the complainants, while the right of contribution and means of securing it, *inter sese*, is ignored, by leaving out of the suit two of the parties, who, they say, were liable, who are known to complainants, and whose names are given.

The Charter nowhere subjects those who acquired shares "subsequent to the time of failure," as stated in Paragraph IX, and as stated in the prayer "between the date of failure and a subsequent day" to liability; on the contrary, the 20 charter excludes, by the rule *expressio unius*, any other shareholders but those who held shares on the day of failure, and within twelve months previous thereto.

The Record shows other inconsistencies and uncertainty in the legal position assumed by complainant.

In the replication of complainant to the answers of L. D. Childs and others, (Record, p. 51, fol. 131,) it is said:

"And complainants further say, that the assets of said Bank are insufficient to pay the bills held by them, and they are entitled to recover against the defendants, as stockholders, 21 enough to pay said bills, provided the amount adjudged against them severally does not exceed the sum of fifty dollars for each share held by them respectively."

In the replication to the answers of James P. Carroll and others, (Record, p. 55, fol. 143,) the position is:

"And that a decree is asked against the said defendants only for such sum, not exceeding fifty dollars upon each share of capital stock of said Bank, held by them respectively, as shall appear to the Court necessary to satisfy their just demands, after the assets shall have been wholly exhausted."

22 The prayer of the bill claims that each shareholder shall

be decreed to pay to complainants absolutely fifty dollars, or such portion of such sum as shall be sufficient to pay the just and legal demands of complainants, without reference to the sufficiency or insufficiency of the assets.

The first replication claims, that complainants are entitled to recover against defendants "enough to pay *said bills*, provided the amount does not exceed fifty dollars," without providing for the disposition, as a payment on account, of the assets of the bank, and

The second replication asks only for such sum, not exceeding fifty dollars, upon each share, *after the assets of the bank have been wholly exhausted.* 23

It is difficult to imagine, how a decree can be rendered in conformity, with the prayer of the bill, and, at the same time, with the prayers of the two several replications, or either of them.

"The essential statements constituting *the case* for equitable relief, have their foundation in what is denominated the *stating* part in the formal division of the bill, which is to sustain the *charging part*, and both to justify the *interrogatory* part and *prayer*, each being consecutively dependant. *Mitford's Pl.*, (*42*) *note 2.* 24

(The complainant's equity must appear in the stating part of the bill. *Flint vs. Rives, 3 Ves. Jr., 343* ; *Norbury vs. Meade, 3 Bligh, 211 ; Macnamara vs. Sweetman, 1 Hogan, 29.* The substance of a bill must contain ground for relief, and there must be equity in the case, when fully stated and correctly applied to the proper parties, sufficient to warrant a decree. *Harding vs. Hardy, 1 Wheat., 103.*) *Ibid.*

"But no admission in the answer can, under any circumstances, lay the foundation for relief, under any specific head of equity, unless it be substantially set forth in the bill. * * Nor can complainant make a new case or departure from his allegations by special replication. *Jackson vs. Ashton, 11 Pet., 248, 274, 252.*" 25

Again, the record shows, that the allegation of the bill (par. v., p. 2, fol. 6,) that the said Exchange Bank of Columbia, some time previous to first day of December, 1862, failed to pay their bills of credit, known as bank bills, and

26 continued so to fail to pay their bills of credit up to 22d day of December, A. D. 1869, and the further allegation (par. vii., p. 3, fol. 7,) viz: "that on the first day of December, 1862, and indeed at an earlier period, the said Exchange Bank of Columbia had failed," are contradicted by the "report of the Special Master." (P. 67, fol. 175,) viz:

"From the character of the testimony, I conclude that the Exchange Bank of Columbia is now insolvent, and that it became insolvent some time during the month of February, A. D. 1865. * * Hence we can safely fix the month of
27 February, 1865, as *the* date of the failure of said Exchange Bank of Columbia, and I so report."

The bill charges (par. viii., p. 3, fol. 7,) that "in consequence of the failure of said bank," (that is to say, "on the first day of December, 1862, and indeed at an earlier date,) the stockholders *then* holding shares in said bank, or who had been interested therein within twelve months previous to said failure, became liable for the debts of the said Bank for sums not exceeding twice the amount of their shares, held by them respectively," whereas, in contradiction thereof, the
28 report of the Special Master gives the insolvency of the Bank at some time during the month of February, A. D. 1865, as his conclusion from the character of the testimony of the date of failure, and reports the names of certain parties owning stock at that date, and at various dates previous thereto, with the amounts of shares of stock held by them respectively.

The decree following the report of the Special Master is not only not in conformity with the allegations of the bill, but directly contradicts the charges thereof in the following
29 essential particulars.

1. It decrees "that the persons who held shares of stock in the Exchange Bank of Columbia in the month of February, 1865, or who were interested therein within twelve months previous to said February, 1865, are liable and held bound individually to the complainants herein for a sum not exceeding twice the amount of the share or shares held by said shareholder respectively." Whereas,

The bill charges that those persons who held stock in said

bank on the 1st December, 1862, or were interested therein 30
within twelve months previous thereto, are liable to complainants, and are so liable in consequence of the failure of the bank on that day to redeem its bills in coin.

The result is, that certain persons are made defendants and charged as holders of stock on one day in a certain year, and as liable in consequence of the alleged failure of the Bank, on that day and year, to pay its bills in coin, while the decree goes against those persons who were holders of stock in a certain month in another and different year (three years after
the former,) upon the conclusion from the testimony, that the 31
Bank had become insolvent on the last named year and in consequence thereof their several liabilities had accrued. "A party is not allowed to state one case by bill or answer, and make out a different one in proof. *Boone vs. Chiles, 10 Pet., 177; Knox vs. Smith, 4 How. 298.*

2. The bill claimed from defendants so charged as above, each fifty dollars per share of stock held by them respectively on the 1st December, 1862, or within twelve months previous thereto, or so much thereof as would satisfy the just and
legal demands of the complainants, while 32

The decree makes no enquiry into what sum from each of the defendants, short of fifty dollars per share, would satisfy the just and legal demands of the complainant, but adjudges that defendants each pay absolutely to complainants a sum equal to double the amount of the shares held by them in the month of February, 1865, or within twelve months previous thereto.

The first replication of complainants claims that they are entitled to recover against defendants (as shareholders on 1st
December, 1862, and within twelve months previous,) enough 33
"to pay said *bills*, provided the amount does not exceed fifty dollars."

While the decree adjudges absolutely twice the amount of each share against each and every shareholder (as such in the month of February, 1865, and for twelve months previous thereto) without enquiry as to whether it be enough or more than enough to pay said bills,

The second replication asks *only* for such sum, not exceed-

ing fifty dollars upon each share (held on 1st December, 1862,
34 and for twelve months previous) after the assets of the Bank
have been wholly exhausted, while

The decree gives to complainants, without attempting to exhaust the assets, judgment against the shareholders (between February, 1864, and February, 1865, inclusive,) absolutely, for an amount double the amount of their respective shares.

In the face of such inconsistencies and defects apparent upon the record, with the evidence, that the defendants in judgment are not found by the decree to be in the class, or
35 category, or period of time, as shareholders, as are the persons
so charged in the bill, the decree cannot be sustained, and should be set aside; and, further, inasmuch, as, on the record, the case made by the bill has not been sustained by the proof offered by complainants, and on the vital point of the alleged failure of the Bank, and time of accrual of the liability of defendants, has been wholly contradicted by the testimony and finding of the court, the bill should be ordered to be dismissed with costs to defendants.

WILLIAM GODFREY, Appellant,
36 *vs.*
HARVEY TERRY, Appellee,

ABSTRACT OF THE CASE.

Analysis of the Bill.

Bill, filed 2d December, 1870, by Harvey Terry, Complainant, on behalf of himself and all other creditors of "The Merchant's Bank of South Carolina, at Cheraw," alleges the several Acts of incorporation, by which said Bank became vested with "the right to issue bills and notes, as a circulating medium, and payable by the said Bank in coin, on demand,"
37 refers to the A. A. 20th December, 1853, by which it is provid-

ed that "in case of the failure of the said Bank, each stockholder, copartnership, or body politic, having a share or shares in the said Bank, at the time of such failure, or who shall have been interested therein, at any time within twelve months previous to such failure, shall be liable and held bound individually for any sum not exceeding twice the amount of his, her, or their share or shares."

"That on the first day of March, 1865 and indeed at an earlier date the said Bank had failed, * * *

That those holding shares in said Bank, or who had been in- 38
terested therein, within twelve months previous to such failure,
became liable for the debts of the said Bank, for sums not exceeding twice the amount of the shares held by them respectively. Annexes a list of the stockholders alleged to be such at the time of the said failure, with their respective quota of shares, as far as at date of filing of Bill had been ascertained.

Reserves to complainant the right to amend said list from time to time as other names of stockholders may be discovered, recites A. A., 13th March, 1869, which provides "that
all Banks incorporated by authority of this State, and which 39
have by said authority, issued bills of credit, known as bank-bills, and have failed to comply with the said corporate privileges by refusing to pay their bills of credit and are now thus failing to comply with the provisions of Act of Incorporation in this particular, and shall so continue to violate such Act until 1st day of December, 1869, shall forfeit all corporate rights and privileges and are forbidden to transact any business as banking institutions."

That of the said bills of credit of the said bank, or pro-
missory notes, payable on demand to bearer, and constituting 40
a part of the circulating medium intended to be furnished by the said bank in accordance with its charter, a large amount in the regular course of trade, and for valuable consideration, came to complainant.

Claims, that complainant "is entitled to have of the assets of the said bank, if they be sufficient to discharge all its debts and liabilities, payment in full * * * and "if the said assets are not sufficient, the proportion to which on a division of the same, to all the bill-holders and creditors, 41 complainant may be entitled, and * * * is also entitled to payment of his debt out of the property of the various persons mentioned in the list appended and marked Exhibit "A," *on their* liability as stockholders of the said bank at the time of its failure, or as persons interested therein at any time within twelve months previous to said failure, according to the provisions of the Act of the General Assembly.

The bill claims to have an account of the assets of the bank, and that the same be marshalled and applied to the
42 discharge of the claims of creditors of the bank.

And that complainant is entitled to pursue on the equity side of the Court, the said stockholders,

To a full discovery of the facts as charged, and

To a full payment of his claim against said bank out of the property of said stockholders of said bank.

Analysis of Answer.

The defendants answering admit, that the bank organized under Acts of the Legislature, as alleged, and issued its notes, which passed as money, under the patronage, encouragement
43 and control of the State.

That the State made the provision, in the Act of 1853, for the liability of the Stockholders in case of the failure of the bank, and defendants say, that this was intended by the State as one of the means of protecting the currency of the State, which almost wholly consisted of the bills and notes of this and other banks. That to this end the State made the convertibility of bank notes into specie, an essential ingredient of such issues. Defendants admit, that the bank carried on business until some time in 1865, when its doors were closed.
44 But in admitting this, they by no means admit that the Bank was solvent up to the time of its closing. The Merchant's Bank of South Carolina had been in successful business up to the period of the late war, before the happening of which event it suspended specie payments.

That the civil war deranged the whole currency of the country, and disturbed all values, and ended in the destruction of nearly every species of property.

That the bills of the Bank ceased early during the war to pass as money or currency, and became articles of mere commerce and speculation. 45

Defendants deny that the complainants took the bills, when they circulated as money, or as a specie circulation, or when they were redeemable in specie, or until long after they had become mere articles of speculation.

Defendants deny that they are liable in any form to the plaintiff.

They deny, that in the Act or Acts of the General Assembly of the State, any liability is created or imposed, except in aid of the public policy of the State in maintaining the full value of the bills or notes of a bank or banks, while the 46
same are in circulation as money, and to enable the State to have within its control the means of protecting those, who might receive said bills or notes as part of the currency of the State, and gave value for them as the circulation of specie-paying Banks of the State.

That such liability to the State arose, as was intended by the State, when a bank or banks refused to redeem the issues of notes and bills, in gold or silver coin, and by so doing failed in its obligation to the State, and to those who, at the time of such failure, were the holders and owners of such 47
bills and notes, which, before that time, had been by them received as money.

Defendants deny, that by the Acts of the Legislature of the State is any liability created or imposed, or intended to be created or imposed upon the stockholders for notes and bills, which have been obtained by purchase, after they had ceased to pass as money, or to circulate as bills or notes of a specie-paying bank.

Defendants deny that complainant has cause of action or is entitled to judgment as asked in the bill. 48

. Defendants further say, that in 1861, the State of South Carolina engaged in war with the United States, in violation of the obligation of the Constitution, in consequence of which, much of the property, and assets of the said bank became and were, wholly lost to the said bank, to its creditors and stockholders, and that liability for losses so caused, cannot be held to have been created or imposed by the State on the shareholders of said bank, or intended to be enforced against them.

49 Defendants also say, that the bank sustained further loss, by the refusal of the State to pay to the said bank the sums of money for which the State was lawfully indebted to the bank, which sums in amount would, if paid, be more than enough to satisfy the complainant.

Defendants, for a farther defence, deny that the complainants have any claim against them, which is not barred by lapse of time.

Defendants farther deny that any right of action is given by any Act or Acts of the General Assembly, and that complainants have any right to maintain the complaint. 50

That in all cases of liability legally arising under said Section of the Act of Assembly, A. D. 1853, there being no person named, to whom, nor thing for which the stockholders, in case of failure of the bank, should be liable; the liability can only be enforced by the State, or, in the name of the State, for the benefit of such person or persons as may be entitled to relief, or as may be designated specially by the State.

Defendants farther say, that a large part of the bills, or 51 notes of said bank, were issued after the suspension of specie payment in 1860, and after the same had ceased to be currency, by the said bank, unlawfully, as a loan to the Confederate States government to enable it to prosecute the war with the United States, and in the purchase of certain illegal securities issued by the Confederate government in aid of the "rebellion," and that all such bills or notes were issued without legal consideration and unlawfully, in violation of the charter, and as obligations of the bank, are void.

That the unlawful purposes and want of consideration and 52 other circumstances connected with such bank notes were matters of notoriety, and that all who received such notes or bills after 1860, took them with notice of such defects.

Assignment of Errors.

Appellants assign the following matters of law as Error in the Decree of the Circuit Court:

1. That assuming the appellee to be entitled to sue and to recover at all, complainants below were not entitled to judgment and execution for the entire amount of their claims against the stockholders of the Bank, and, in no event, for more than the balance of their claims, remaining unpaid after 53
the assets of the Bank had been, by proper proceedings, ascertained and applied, according to law, to the liquidation of the obligation of the Bank.

2. That the stockholders, who were proved to be such at the date of the failure of the Bank, and such as had been stockholders for twelve months previous thereto, if liable at all, are liable only under a proceeding in Equity, by which all the liabilities of all the stockholders can be ascertained and a fund for distribution created by a just contribution in Equity among all who are liable; that the proceedings, in 54
this case, authorizes judgment and execution in favor of each complainant for the full amount of their respective claims against each of the stockholders, to the full amount of the total liability of each, with no provision for ascertaining either the whole sum to be contributed, the parties who are to contribute, nor the proportionate share of each contributor to the common fund.

3. That the decree merely adopts the report of the Special Master, who reported the claim proved, on the one hand, and on the other hand taking the list of stockholders on a given 55
day, reports each shareholder on the list as liable for so much money, (an amount double the amount of shares held by him) without inquiry being made as to what persons on the list had been served, or had answered the writ of subpœna in the case, nor what persons among the co-contributors were dead, and what were beyond the jurisdiction of the Court.

4. That the decree assumes, without proof being taken, and, against the admitted facts, that the date of failure of the Bank was the 1st day of March, A. D. 1865, and passes judgment against those who were stockholders on that day,

56 and during the twelve months prior thereto, arbitrarily and without law.

5. That the proof is, that the Merchant's Bank of South Carolina, at Cheraw, suspended specie payments at the same time with the other Banks of the State of South Carolina, and was so suspended on the twenty-ninth (29) day in November, 1860, when it failed to redeem its bills and notes, and never afterwards resumed specie payments, and the persons who were stockholders, on that day and for twelve months prior thereto, if liable at all, were the only persons liable to
57 contribute to the fund for distribution among the creditors of the Bank, and all persons who were not alleged to have been stockholders on the said twenty-ninth day of November, 1860, or during twelve months prior thereto, were improperly made defendants in this case.

6. That there was no other testimony before the Court than the date of the suspension of specie payments, viz: the twenty-ninth day of November, 1860, by which the date of actual failure could be ascertained, or determined, and therefore, the decree, being unsustained by proof, should be set
58 aside and, the allegations of the Bill being unsustained, judgment should be given for defendants.

7. That if the Court construe the liability clause of the charter, as creating a contract liability, on the part of the individual stockholder to the creditor of the Bank, for the debts of the Bank, the persons, who were stockholders at the date of failure (the 29th November, 1860, as appellants contend) were then liable, and the liability, which so accrued at that date, was barred by lapse of time before the filing of the bill in this case, and complainants had no right to sue.

59 8. That if the 1st March, 1865 (the time alleged by complainants, and assumed by the decree), be the time of failure, the stockholders were then liable, and their liability was barred by lapse of time, before the filing of the bill in this case.

9. That the averments of the bill are not sustained by the proof.

10. That the liability of the stockholder, under the Charter of the Bank, was not made, by the statute, a liability *for*

the debts of the corporation, and cannot be construed, by implication, to be a liability *to the creditors* of the corporation. 60

11. That the liability of the stockholder was not made by the statute a liability for the bills and notes of the Bank, and cannot be construed to be, by implication, a liability to the holders of the bills or notes.

12. That if the stockholders are held to be liable to the billholders as guarantors of the bills and notes of the Bank, they were guarantors only to the *bona fide* holders who received said bills, while they circulated as currency of a specie paying Bank, and before suspension of payment in coin, and are not liable, as guarantors, to those, as holders, who purchased them after they were dishonored. 61

13. That the right, of a *bona fide* holder of bank bills, received before dishonor, to claim against the guarantor of the Bank, is not negotiable after dishonor, and can only be transferred by assignment.

ARGUMENT.

ON FIRST, SECOND AND THIRD GROUNDS.

The decisions of this Court in *Pollard vs. Bailey, 20 Wallace, p. 525; Terry vs. Tubmon*, decided March, 1876, (Mss.) in cases similar to the present case, as well as the decision of the 62 Supreme Court of the State of South Carolina, in the case of *Terry vs. Calnan*, (*5 So. Ca. Reports, p. 511*, partially construing the Statute in question,) have determined the first, second and third grounds assigned for error.

In *Terry vs. Calnan*, the Court, in deciding a demurrer for want of parties, say: "The form of the complaint, as to the parties, is not reconcilable with any claim to relief but such as can be granted through the equitable jurisdiction of the Court. * * * The Receiver of the Bank is made a defendant, and judgment demanded against him in that charac- 63 ter for the whole amount of the indebtedness claimed by the plaintiff. * * * * He is here a proper party, *because the assets of the corporation, in his hands, must be applied, in aid of the stockholders to diminish, to the extent they may avail, whatever liability the charter may have imposed on them, on the* *equitable principle that if the stockholders are liable for the debts of the corporation, its property is to be administered in their aid to lighten the burden which may fall upon them."*

It is proper here to note, that the question of the construc-
64 tion of the stockholders' liability clause of the charters of banks in South Carolina, has not yet been adjudged by the Supreme Court of that State, on its merits. It stands *there* as *here*, open for discussion, without any decision, as to whether the stockholders are liable at all. It has only been adjudged that "if the stockholders are liable" the proceeding must be through the equitable jurisdiction of the Courts, as above stated. The above cited case of *Terry vs. Calnan*, has a second time been before the Supreme Court of South Carolina, and has been a second time remanded to the Circuit
65 Court. The decree of the Court, dated March 16, 1876, is as follows: "The judgments appealed from were prematurely pronounced. The liability of the defendants, if any, is dependant on the fact of their having been stockholders at the time of the failure of the bank, or within twelve months preceding it. The judgment does not fix the day of failure of the bank, and therefore does not afford the requisite means of ascertaining whether the defendants are chargeable as stockholders. It is, therefore, ordered that the judgment and all subsequent proceedings be set aside. It is further ordered,
66 that the case be remanded to the Circuit Court of Common Pleas, for Richland County, in which it was heard, to ascertain at what time did the failure of the bank occur, who were the stockholders at the time of such failure, or were interested therein at any time within twelve months previous thereto, what was the amount of shares held by such shareholders, respectively, when did the plaintiff and others, claiming as billholders, become possessed of the bills of the said bank, claimed by them, and to ascertain what amounts, if any, are properly chargeable against the defendants by rea-
67 son of the matters alleged in the complaint, and to apportion such sums among the defendants found liable, in the ratio of the amount of stocks held by them as aforesaid." *Mss.*

FOURTH, FIFTH, AND SIXTH GROUNDS.

"The proof is that the Merchant's Bank of South Carolina, at Cheraw, suspended specie payments at the same time with the other Banks of the State of South Carolina, and was so suspended on the 29th November, 1860, when it failed to redeem its bills and notes, and never afterwards resumed specie payments." * * * Record, p. —.

Defendants contend that there was "no other testimony 68
before the Court, than the date of the suspension of specie payments, viz., 29th November, 1860, by which the date of failure could be ascertained or determined," and that if the stockholders be liable at all, those *only* who were stockholders "at the time of such failure, or who shall have been interested therein at any time within twelve months previous to such failure," were proper parties to this suit. If this be so, then those who were stockholders "on the 1st March, 1865," were improperly made defendants, and the complainants have failed to sue the proper and necessary parties. 69

This being a proceeding to make all the individuals of a certain class contribute to a common fund, the defendants have a vital interest in the question of their co-defendant contributors being brought before the Court.

WAS THE DATE WHEN THE BANK CEASED TO PAY IN COIN THE TIME OF "FAILURE" CONTEMPLATED BY THE STATUTE?

This point has been ably discussed in a Circuit Court decree in the State of South Carolina, to be found in the case of *Donaldson vs. Bank*, (4 So. Ca. Reports, p. 106.) Graham, J., in his decree, says: 70

"In the determination of these questions very little, if any, aid can be derived from the decisions made in other States upon analogous Statutes, and upon which so much reliance was placed by the plaintiff's counsel. The decisions turned, in a great manner, upon the peculiar phraseology employed in the charters to which construction was given, and which differed, in several essential particulars, from that used in the Statute now under consideration. In all these cases the charters not only imposed an individual liability upon the stock-

71 holders, but designated, with great minuteness, the extent of such liability, the contingency upon which it should attach, the particular class of creditors for whose benefit it was imposed, and the mode of procedure by which it should be enforced.

Upon all these points the charter of the Farmers and Exchange Bank is entirely silent. It is couched in the most general and ambiguous terms. It declares that the stockholders shall be liable in case of "failure," but does not indicate, in any way, the meaning of the word "failure," or say
72 to whom, or for what, they shall be liable. * * * * *

It is an established rule, in the exposition of Statutes, that the intention of the lawgiver is to be deduced from a view of the whole and every part of a Statute taken and compared together.

When the general purpose of the Statute is thus ascertained, the language of its provisions must be construed with reference to that purpose, and so as to subserve it. If the words are not explicit, the intention is to be collected from the context, from the occasion, and necessity of the law,
73 from the mischief felt and remedy in view. *1 Kent., 462.*

Applying these principles to the case in hand, it appears to me, that the intention of the Legislature must be ascertained by construing the 4th Section of Act of 1852, in connection with the 2d Section of the same Act, which incorporates into the charter the provisions of the Act of 1840. That Act, dictated by considerations of public policy, was intended to provide against the suspension of specie payments by the Banks of the State.

It provides, that, if any bank "shall declare a determina-
74 tion to suspend, or refuse payment of its notes, according to their legal obligation, in current coin," it shall be liable to pay to the State, at the expiration of every month after such suspension, or declaration, and during the continuance thereof, a heavy penalty, to be recovered by the State, in an action of debt. In order to preserve the banks in a safe condition and to prevent the currency from being debased, and the community defrauded, by an amount of bank bills in circulation disproportioned to the means of redeeming them, the Act

required the President or Cashier of each bank to make monthly returns on oath, setting forth, among other things, 75
the bills in circulation, the specie on hand, and the other resources of the bank.

From these provisions of the Act it is obvious that the leading object of the Legislature was to guard against the public mischief of an irredeemable circulation. By the Act of 1852, eleven banks were about to be incorporated, each of them clothed with the right to issue their bills or notes, intended to be circulating currency, or medium of exchange, instead of gold and silver. Against bills thus put in circulation, a very disastrous experience had recently shown that 76
the community had no practical means of protecting themselves.

This was the mischief felt. This was the necessity and occasion of the law. It is not surprising, therefore, that the Legislature, throughout this Act, manifests an anxious solicitude to prevent an abuse of the high privileges it was about to confer upon the banks, and to secure by the most stringent provisions, those who should receive the bills, in their daily business as currency or money. To effect this end, it not only imposed upon the banks, as banks, a severe penalty 77
in case of their suspending payment of their notes in specie, but also rendered personally liable, for the redemption of the notes, those who had asked the privilege of supplying the circulating medium.

The second section of the Act was designed, in case of a failure of the bank, to repair the public wrong due to the State, by an abuse of the charter, which the State had granted.

The fourth section was intended to repair the *private* injury sustained by those who had received as money, bills of the 78
suspended bank.

These two sections are *in pari materia;* they relate to one subject, are governed by one spirit and policy, and are consistent and harmonious parts and provisions in one system. They must, therefore, be construed together, and, so construed, lead irresistibly to the conclusion that the "failure" referred to in the fourth section is a failure on the part of the

bank to pay its notes, "according to their legal obligation, in current coin." And this conclusion is confirmed by the
79 language used. The liability of the stockholder is made to depend, not upon the insolvency of the bank, (its inability to pay its debts,) but upon its "failure," or "suspension of payment."

This is the definition of the word "failure," given by Worcester and other lexicographers, and, in this sense, the context shows that the Legislature intended to use it. If this be not the true construction of the Act, it is difficult to say in what sense the Legislature could have used the word failure. If the Bank did not fail when it refused, or was unable
80 to satisfy its engagements in money, as they became due, when did it fail? Was it when the whole mass of its means, including property of every description, could not, by any possibility, or in any event, be made adequate to the liquidation of its existing debts? This construction would make the failure of the Bank equivalent to its total insolvency, and would render the liability imposed on the stockholder a security of little value to the creditor, who would have no means of determining the precise time at which this condition of things was reached, and who, without this knowledge,
81 would be unable to determine against what stockholders to bring suit. From the allegations in the complaint, the plaintiffs' view appears to be, that the failure of the Bank took place in 1865, when it closed its doors and ceased practically to exist; but there is nothing in the charter to warrant the conclusion that the Legislature intended to suspend the creditors' right to enforce the statutory liability of the stockholder until the insufficiency of the assets of the corporation was made to appear, either by the Bank's voluntarily going into bankruptcy, or judgment recovered, or execution issued
82 against it.

The plaintiffs' construction is open, too, to the further objection, that it would enable the Bank, by keeping up the semblance of business, or the creditor, by delaying suit, to shift the liability, arbitrarily, from one set of stockholders to another. Such a provision would be unreasonable, and a construction which would lead to such a result should not be given to the Act, unless absolutely necessary to give it effect; and, in my opinion, it is not required, and would be inconsistent with its whole scope and design."

The word failure, we have seen, unless controlled by the 83 context, means "a suspension of payment." In South Carolina, before 1861, the only "payment," in law, or legal tender, was in coin. A "suspension of specie payment," therefore, it must be assumed, in legislative parlance, was synonymous with "suspension of payment," or failure. Failure is not synonymous with any thing else. It is not synonymous either with *insolvency*, or *bankruptcy*. "Insolvency," says Crabb, "denotes a state, namely, the state of not being able to pay what one owes. Failure signifies the act of failing in one's business. Bankruptcy necessarily implies a failure, yet it does 84 not necessarily imply insolvency; for some men may, in consequence of a failure, be led to commit an act of bankruptcy, who are afterwards enabled to give a full dividend to all their creditors."

Bouvier defines failure "a suspension of payment," "a neglect to fulfill commercial pecuniary engagements," and he adds, "according to the French Code of Commerce, every merchant or trader who suspends payment is in a state of failure." *Bouvier L. D., Vol. 1, p. 554.*

Worcester says, under the head of bankruptcy: "Failure 85 is a suspension of paying debts; insolvency, the inability to pay them."

In *Re* Chandler, 4 Bank Reg. 66, Lowell J. says: "If a trader allows his paper to go to protest, he is said to have failed, or to have suspended; the expressions are used as equivalent."

But the matter, we think, has been put beyond argument by judicial construction in South Carolina, where it has been adjudged by the Court of Errors, in the case of the State *vs.* The Bank (*1 Speers, So. Ca., Rep. p. 433*), that 86

"A general refusal by an incorporated Bank to redeem its issue and deposits in gold and silver coin is, *per se*, a sufficient cause of forfeiture of its charter."

In the language of the learned Judge, who delivered the opinion of the Court (*Richardson J.*)

" Men may call this suspension, or compromise. But the resolution to suspend specie payments, coupled with the fact that the Bank avoided payment, when demanded, constituted refusal to pay, and an abuse of the great end and prime policy
87 of its charter. * * * * * That gold and silver coin constitute the measure of all values, and the only legal tender in payment of debts ; and that bank bills represent such coin, but only while they are secured in the payment of such coin.

From such unquestionable propositions, we deduce these conclusions, as a necessary consequence—that such a bank is bound to pay its bills, and return its deposits of money, as a consequence of reason and law, though not by the expression of its charter—that such payments must be in gold and silver
88 coin by virtue of the Constitution. * * * And finally, that a deliberate and wilful resolution to suspend such payments, accompanied by actual refusal to pay * * constitutes an explicit abuse of the trust of the Bank Charter, and, therefore, it is subject to forfeiture at the demand of the State."

The conclusion is irresistible, that the 29th November, A. D. 1860, the date of the public and general suspension of specie payments by the bank, was the time of failure within the meaning of the charter, at which the alleged liability of
89 the stockholders to the creditors accrued, if it accrued at all, and consequently those persons, and those only, who were stockholders at that date, and for twelve months previous, were the proper parties defendant.

We proceed to the error assigned in the

SEVENTH GROUND.

" That if the Court construed the liability clause of the Charter as creating a contract liability on the part of the individual stockholder to the creditor of the bank for the debt of the bank, the persons, who were stockholders at the
90 date of failure, viz : the 29th November, 1860, (as appellants contend,) were then liable as guarantors, and the liability which so accrued, at that date, was barred by lapse of time before the filing of the bill.

The Act of 1712, (Statutes at Large of South Carolina, 2d Vol., p. 585,) provided, that all actions upon the case, other than for slanders and the actions for accounts and for debt, "shall be commenced and sued within four years next after the cause of such actions or suits, and not after."

If the Court shall determine, that the suspension of specie payments, 29th November, 1860, was failure, within the 91
meaning of the Legislature, then the right of action of the creditors, accrued at that date, and should have been brought against the stockholders, *not after* four years from that time.

But it may be contended by appellees, that the operation of the Statute was suspended in the State of South Carolina by A. A. 1861, (S. L. Vol. 13, p. 19.) Section V., and continued suspended from December 21, 1861, until December 21, 1866.

Let us suppose, for the present, this Act to be valid, and to be held applicable to suits in the Courts of the United States. 92
Still appellant contends, that, calculating the time within which the creditors of the bank should by law have sued the stockholders, and we find that from 29th November, 1860, to 21st December, 1861, one year and twenty-two days had elapsed after date of failure, and before the operation of the Statute within the State was suspended. From the 21st December, 1866, when the Act expired, to 30th November, 1869, two years and three hundred and forty-four days had elapsed, making up (with the time it had run before the war,) the period of four years, after which, by law, the citizens of 93
the State, in the State Courts, could not have sued.

The complainants did not, in this suit, file their bill until December 2, 1870, (Record, p. ——) a full year after their claims had become barred. Even if they are given the benefit of the State enactment above cited.

The above calculation of the lapse of time is based upon the interruption of the Statute of Limitations, by the State law of 1861, known as the Stay Law, and entitled an "Act to extend relief to debtors, and to prevent the sacrifice of property at public sales." Statutes at Large, vol. 13, p. 18. 94

Its first section provides "that it shall not be lawful for any officer of this State to serve or execute any mesne or final process of any of the Courts of this State for the collection of money, until after the expiration of the first session of the next General Assembly, except in cases provided for in the second section of this Act, and *except process for military fines.*"

Its fifth section provided "that the operation of the Statute of Limitations be, and the same is hereby suspended during
95 the period in which this Act is of force, so far as applicable to causes of action coming within the meaning of this Act."

The terms and date of the Act show, that it was a war measure. It was renewed from year to year during the war. It was a measure of relief and protection to debtors, citizens of South Carolina, then engaged in war with the Government of the United States, most of whose citizens were under arms, or enrolled in military service.

Its last extension was in 1865, prior to the reconstruction, by Congress, of the governments of "States in rebellion." The
96 Courts of the State, prior to that reconstruction, had decided that, under the Stay Law of 1861, the operation of the Statute of Limitations was suspended in the State, from 21st December, 1861, until 21st December, 1866, but these Courts were overthrown by the process of reconstruction. It is presumed, that the provisions of these Acts, suspending the operation of the Statute of Limitations of 1712, in South Carolina, during the war, will not be accepted "as a rule of decision in the National Courts" and applied by this Court to suitors in the United States Courts. The terms of the Act
97 besides clearly restrict its application to process in the State Courts, and between citizens of the State.

As early as June, 1866, the United States Circuit Court for the District of South Carolina was open to suitors, and judgments were recovered therein.

We have seen, that, even if the A. A. of South Carolina of 1861 and 1865 should be adopted in the Courts of the United States, as a rule of decision, and applied to the claim of the plaintiffs in this suit, the bar of the Statute of Limitations was complete, without including any portion of the five years,
98 during which it was held to have been suspended in South Carolina, viz: from 21st December, 1861, to 21st December, 1866.

We take it for granted, that the rule of suspension, which the Court will apply to this case, is that, which was applied in *Brown vs. Hiatts, 15 Wallace, 177*, and other cases since the war, that is to say, that the war suspended the operation of the statute, and that its operation ceased in South Carolina on 19th April, 1861, and was revived on 2d April, 1866. "*The Protector*," *12 Wallace, 700.*

If the 29th of November, 1860, be taken as the date of the 99 failure, contemplated by the statute, and that, as the date of accrual of plaintiff's right of action against the stockholders of the bank, we find that, before the war, and between 29 November, 1860, and 19 April, 1861, one hundred and forty-one days had elapsed of the four years limitation. After the war; from the 2 April, 1866, exclusive, to 12 November, 1869, was three years and two hundred and twenty-four days, making up (with the time elapsed before the war) the period of four years required to bar plaintiff's right of action.

The Circuit Courts of the United States, as the record 100 shows, were open in the District of South Carolina on 12 June, 1866. Complainants did not file their bill until December 2, 1870, over one year after their claims were barred by law.

But, assuming, that the 1st March, 1865, the date, alleged by the complainants and assumed in the decree, be the date of failure of the bank. As we have seen, the war ended in South Carolina on the 2d April, 1866, and the operation of the Statute of Limitations then revived. After the 2d of April, 1870, the claims of the creditors of the bank against 101 the stockholders were barred. If the 12 June, 1866, the date on which the Circuit Courts of the United States was open, be regarded as the time when the operation of the statute was revived, then on the 12 June, 1870, the bar was complete. So if the proclamation of August 1866, the last peace proclamation after the war, be taken as the end of the war, the complainants were barred in August, 1870. Their bill filed 2 December, 1870, was, upon any calculation of time, too late.

The seventh and eighth grounds of error proceed, upon the assumption, that the liability of the stockholders, if it be con- 102 strued to be a liability for the debts of the bank, and a contract liability to the creditors of the bank, is that of guarantors.

Appellees, however, say, that the Statute of Limitations does not apply to the action of the creditor of the bank against the stockholder to enforce the alleged liability for the bills of the bank, because "by the charter, the stockholders are made liable for their payment—" that,

"The individual liability of the stockholders for the debts of the corporation being a creature of statute * * *
103 an action upon this statute liability, if maintainable at common law against one or more of the stockholders, would have been an action of debt, but it would have been upon a specialty, or upon an obligation in the nature of a specialty, and to such an action the statute would be no bar."

"If, on the other hand, there could be no action at common law, but the creditor could only enforce his remedy in equity, neither then would the statute be a bar to the action, as equity would follow the rule of law in such case," and 'that "The Limitation Act of 1712, (vol ii, p. 583,) provided that
104 actions of debt upon any lending or contract *without specialty*, should be brought within four years", but did not limit actions of debt upon specialties which run for 20 years.'

The authority relied on for this position is that of Mr. Justice Story, in *Bullard vs. Bell, 1 Mass., 243.*

This case is the one wherein the individual liability of a stockholder, under the Massachusetts Statute, is treated as *a debt by specialty*, "an obligation created by Statute." It is the extreme case on the line of severe ruling.

It is not apprehended by the appellants here as applicable
105 to the South Carolina Statute, and, therefore, a case in point against them.

It is conceded, that a Statute is a specialty; that "debt lies in all *specialties* to recover a demand for money secured thereby," and that "it lies also upon Statutes *where an action of debt is given by Statute*, and where the Statute provides *for the payment of a sum of money*, or gives a penalty or forfeiture on the doing of a forbidden act, but does not mention any mode of recovering it." But where an action of debt is *not* given by Statute, and where "a sum of money certain" is *not* imposed, the liability is not the subject-matter of an
106 action of debt on specialty, but of an action on the case.

In *Bullard vs. Bell*, the language of the statute, was "shall, in their private capacities, be jointly and severally liable *to* the *holder* of any *bill* or *bills*, issued by the corporation, *for the payment* thereof."

On the question of jurisdiction, Story, J., says: "But the present action is not founded on any assignment. It is an original action, created by the statute, between the present parties, and never had any existence between any other parties. The debt, which the plaintiff claims from the de- 107
fendant, is a sum. which the latter never owed to any other person. It is a chose in action, *originally vested* under the statute *in the present plaintiff*, and which has never been assigned."

It was not decided, in *Bullard vs. Bell*, generally, (as has been asserted) that the Statute of Limitations did not bar a stockholder's liability. On the contrary, it was held in that case upon the words of the statute, and, on the strictly technical ground, that "debt would lie" * that the liability, being *the subject matter of an action, of debt imposed and* 108
vested by statute—was a specialty.

"The real reason" says Judge Story, "why debt was held not to lie, upon a contract to pay the debt of another, was the uncertainty of the sum to be recovered for the breach thereof. * * The true test is, therefore, whether *the sum to be recovered* has, *upon the contract* itself, *a legal certainty*. Following, therefore, the principle of the old decisions, we may well hold, that debt does not lie upon any collateral undertaking, where the sum to be recovered is uncertain, and sounds merely in damages. * * * * 109
"This is a liability created not merely by the act of the parties, but by *the express terms* of a statute. The Act of Incorporation provides, etc., (quoting the above clause.) * * " * * "I agree at once to the position, that the bills of the bank are to be considered originally as the debts of the corporation, and not of the corporators; and, *except from some special provision by statute*, the latter cannot be made answerable for the acts or debts of the former. * * Nothing can be better settled, than that an action of debt lies, for a duty, created by the common law, or by custom. *A fortiori* 110

it must lie, where the duty is created by statute. Mr. Justice Blackstone says, that every person is bound, and hath virtually agreed to pay such *particular* sums of money, as are *charged on him* by the sentence, or *assessed* by the interpretation of the law. * * * Whatever is *enjoined by a statute* to be done, creates a duty on the party which he is bound to perform. * * * * * * * *When*, therefore, a statute declares, that, under *certain* circumstances, a stockholder in a bank shall *pay* the *debt due* 111 from the bank, and those circumstances occur, it creates a direct and immediate obligation to pay it. * * * *Here* then, the law has declared, that the stockholders shall be liable *to pay a specific sum*, and it imposes on them a duty to do so. How then can the Court say, that debt does not lie, since there is a *duty* on the *defendant* to *pay* the *plaintiff* a *determinate sum of money?* There is no room, under this view of the case, for entertaining any question as to collateral undertaking. The law has *created* a *direct* liability, a liability as *direct* and cogent as though the party had bound himself 112 under seal *to pay* the amount. * * * *"

A careful attention to the steps in the reasoning by which Judge Story reaches his conclusion, and specific grounds, on which he decides, that the Massachusetts statute imposed a duty for which an action of debt would lie, will lead the Court, in construing the South Carolina statute, on the same principles of law, to the conclusion (which we doubt not Judge Story would himself have reached) that the action of debt would not lie, and that, if the subject matter of an action at common law, the liability therein declared could 113 only have been enforced by an action on the case.

In the leading case of *Corning vs. McCollough* (*N. Y.*), *Comstock*, *47*, the language of the statute was, "that the stockholders of the corporation shall be, jointly and severally, *personally liable* for the *payment* of all *debts* and *demands contracted* by the *corporation*, and that any person having any demand against such corporation, *may sue any stockholder*, or director, in any Court, having cognizance thereof, and recover the same, with costs."

It was held that a suit against a stockholder of a corpora-

tion to charge him individually with a debt contracted by it, 114
pursuant to above provision in the Act of Incorporation, is not an "action upon a statute for a forfeiture or cause, the benefit whereof is limited to the party aggrieved, and therefore is not barred by the three years' limitation prescribed in the statute (*2 R. S., 208, § 31*) for actions of that class." It was held to be "a common law action on the case," and "virtually and in effect a liability upon a contract" directly between the individual stockholder and the person who (in the case sued on) had sold goods to the corporation. The Court recognizes the distinction, which was not noticed in *Bullard vs.* 115
Bell, but has been generally established, between a liability *created by* a statute, and one having relation to the statute, but created by act of the parties.

Says Jones, J.: "But there is a class of actions and causes of action which involves statutory provisions in a greater or less degree, but which, though the statute is a necessary link in the chain of title to the remedy, and they may, to some extent, be said to be under the statute, are not, in the legal acceptation of the terms, actions upon the statute within the meaning of the Limitation Acts." 116

To the same effect is the case of *Lindsay vs. Hyatt, 4 Ed. Ch. 97*, wherein it is decided that "the liability of the defendants arises from the terms of the Act of Incorporation, which puts them on the same footing as partners or joint dealers, contracting a debt, as if no Act incorporating them existed. The bond or sealed instrument of the corporation, which the complainant holds, is not the bond or sealed instrument of the defendants, which can be declared on as such against them in an action at law. In such an action the declaration must be *in case founded on the Statute*, and the 117
bond, if valid at all, may be given in evidence, as proof of the indebtedness of the corporation. The *form of the action* and the *nature of the liability to be enforced*, fall within the provision of the statute, which take away the rights to sue within six years."

The attempt is made, to account for this decision, on the ground, that the revised statutes of New York, at that time, contained a general provision limiting to six years "actions

of accounts, assumpsit, or on the case founded on any con-
118 tract or *liability*, express or implied." But evidently the decision is placed on no such verbal construction of the statute; the words "liability, expressed or implied," there used, certainly do not mean a statutory liability, which, if it exist at all, must be express, and plainly means a liability of a contract nature; the subsequent words are controlled and clearly interpreted by the preceding words, "accounts, assumpsit," "on the case" and "contract."

It is not correctly said, that the South Carolina Act of Limitation, unlike and in contrast to the New York Statute,
119 "is silent as to actions upon express or implied liabilities." On the contrary, while it does not use the word "liability," it, effectually, provides for express and implied contracts, or liabilities. Its language is, "all actions for account and upon the case, (other than such accounts as concern the trade of merchandize between merchant and merchant, their factors and servants.)"

Applying the principle of the case of *Lindsay vs. Hyatt*, and of *Corning vs. McCullough*, to the charter liability in the case, it will be found that whatever question might be made
120 in the Massachusetts and New York Statutes, that certainly the argument of appellees, above referred to, is without force here.

In the first place, in the South Carolina Bank Charters the Statute does not "give an action of debt;" it gives no action at all. It does not "provide for the payment of a sum of money." It does not say, as is erroneously assumed in argument, that the stockholders shall be "liable for *payment*," nor for payment of the *bills*, nor of the *debts* of the Bank; nor liable *to* any person or class of persons; to the creditors,
121 or *billholders*, or depositors. Nor does it say how they shall be liable, nor for *what;* nor whether liable to the State or individuals. The Statute has no element of certainty in it as would entitle it to rank the liability therein contemplated, as a specialty. It is (as we have seen) indefinite in declaring even the contingency of failure upon which the liability shall arise. It is a liability, vaguely threatened, not distinctly and solemnly imposed, enjoined, created, or vested by Statute.

The liability under the South Carolina Bank Charters, if it
be a liability to the creditor or billholder, and if it could be
maintained at common law, would be, for the reasons above 122
stated, not an action of debt or specialty, but an action upon
the case, which could not have been brought after four years
after the accrual of the right of action.

The conclusion is irresistible, that the claims of the plaintiffs, were barred before their suit was commenced.

NINTH GROUND.

The averment of the Bill in effect is, that the plaintiff
became possessed "of the bills of credit of the said Bank,
or promissory notes, payable on demand to bearer, and con-
stituting part of the circulating medium, intended to be 123
furnished by the said Bank in accordance with its charter, in
the regular course of trade, and for valuable consideration,"
whereas, the admitted facts show, "that the Merchants' Bank
of South Carolina, at Cheraw, suspended payments at the
same time with the other banks in the State, was so suspended
in November, 1860, and never afterwards resumed specie
payments. The said banks ceased to pay out its bills as soon
as the Confederate currency began to circulate, and the last
time at which any of its bills were paid out, was on the 6th
August, 1861;" and that "in his regular business as banker 124
and broker, the complainant, Harvey Terry, bought the notes
and bills of the said Merchants' Bank of South Carolina, as
proved by him in this case, amounting to over twenty thousand
dollars, at prices ranging from twenty (20) to five (5) cents
of their face value, and that most of these purchases were
made in 1868 and 1869." The averment of the bill as made
being disproved by the testimony, the decree should have
dismissed the bill.

The averment of the bill above recited, if not deceptive, is,
that the plaintiff received said bills while they were current 125
as money, and constituted part of the circulating medium
furnished by the bank in accordance with its charter, and
that he paid value for them as such, in regular course of
trade.

It is flatly contradicted by the testimony above quoted,

which shows, that when Terry purchased they no longer circulated, as money, or constituted the circulating medium furnished by the bank, in accordance with the charter, and were dishonored paper of the insolvent banks, purchased at
126 rates far below their par value.

"A party is not allowed to state one case by a bill, or answer, and make out a different one in proof." *Boone vs. Chiles, 10 Pet., 177.*

Tenth and Eleventh Grounds.

In order to hold that, under the charter, the stockholder became liable to the creditor or to the billholder, the Court must resort to a very liberal (not to say forced) construction of the statute, in favor of the creditors of the Bank.

It must undertake to declare, what *the unexpressed intention*
127 of the Legislature was, in the clause of the charter in question.

It must decide (upon sufficient ground, of course,) that the intention of the Legislature was *not* to provide a liability, in case of failure of the Bank from the stockholders, *to the State*.

It must assume, that the Legislature did *not* intend to reserve to itself the control and disposition of this liability or penalty.

It must hold, that the liability, *threatened* in the charter was imposed and *enjoined* upon the stockholder, and *vested* in the creditor or billholder.

128 It must decide, that no farther legislation was necessary to appropriate the liability, or penalty, so provided, and that the courts may appropriate the penalty to those, who, they may decide, shall be entitled to it.

To reach this conclusion, it must by construction, upon presumed intention, imply words, not in the statute. It must supply, what was plainly expressed in the statute of Maine, upon which the case of Hawthorne *vs.* Calef, 2 Wall., 10, was decided, viz: after the words "liable" insert by construction the important words "*for the debts of the corporation*," which
129 are not in the South Carolina Statute.

In *Hawthorne vs. Calef*, the Court having, in the statute before it, those words "liable for the debts of the corporation", repeated in two separate clauses, and other words, in two or

more clauses, which subjected the property of the stockholder under separate judgment and execution against him, individually, to pay *the debts* of the corporation, was able, without using violent construction, to imply the intended relation of *debtor*, and to say "we think that the case falls within the principle of *Woodruff vs. Trapnal*, (10 How. 190,) and *Curran vs. State of Arkansas*, (15 How. 304,)", and, also, of *Corning* 130
vs. McCullough, 1 Comstock, 47.

In all of these cases the necessary words, were enacted which sustained or justified the implication, of contract relation and privity.

In *Woodruff vs. Trapnal*, "the charter of the bank provided that the *bills* and *notes* of the institution should be *received in* all *payment* of *debts due to* the *State*", and the court held that the clause of the charter constituted with the *holders of* the *bills* and notes a contract on the part of the State.

In *Curran vs. Arkansas*, "the charter of the bank contained 131
a pledge, or *assurance*, that *certain* funds deposited therein should be *devoted* to the *payment* of its *debts*. It was held by the court that this constituted a contract *with the creditors*"—and so it was in *Furman vs. Nichol*, *8 Wallace*, *44*.

We have already shown that, in *Corning vs. McCullough*, the statute was "that the stockholders of the corporation shall be *jointly* and *severally personally liable for the payment* of *all debts* and *demands contracted* by the corporation, and that *any person* having any demand against such corporation *may sue* any *stockholder*, or director, in any *court* having cog- 132
nizance thereof, and *recover* the *same* with costs."

This example of a liability, completely provided, by express enactment, *from* the *stockholder*, for the *payment* of the *debt* of the corporation, and appropriated *to* the *creditor*, together with the authority, expressly conferred, by the Legislature upon the courts, to furnish the remedy, expressly given to such creditor, by suit against the stockholder directly, fully illustrates, how much the Court will have to do, by construction, in case it assumes the burthen of supplying the words which are wanting in the South Carolina Charter. 133

Under the authority of *Hawthorne vs. Calef*, we admit, that if the liability here had been *declared to be for the debts* of the

corporation, and the property of the stockholder had been also *declared* liable for such *debts*, that the Court would imply the contract relation and privity between the stockholder and the *creditor* of the Bank; but we cannot suppose that, in order to raise such implication, the Court will supply words not in the South Carolina Act, and the essential words which connect the stockholder with the *creditor* of the Bank, viz:
134 "the debts of the Bank." If the Court ventures upon the dangerous ground of implying words not in the charter, it is difficult to imagine, upon what ground it will imply the words "for the debts of the Bank," rather than the words "bills and notes of the Bank." The argument, from the great end and object of the State, in providing, through these banks of issue a safe currency, and fortifying it by the liability of the stockholder, would seem to justify the insertion of "bills and notes," rather than "debts," and would more rationally sustain the implied liability to the billholder, than that to the
135 creditors generally.

TWELFTH GROUND.

Should the Court, however, so far strain the language of the charter and say that the stockholder, because declared liable, is, therefore, liable "for the debts of the Bank," and because so liable for the debts of the Bank, is, therefore, liable *to the creditors* of the Bank, or say, that, because liable, therefore he is liable "for the bills and notes of the Bank," and because so liable, he is, therefore, liable *to the billholders*, in the event of failure, and should the Court say, that such
136 liability is, as upon a contract of guaranty, we contend that such guaranty should not be construed to be a guaranty beyond the equity of the statute, or of the case arising under it.

Whether the Legislature intended to hold out a threatened penalty over the heads of the stockholders, or to provide a contract liability for the creditors generally, or for the billholders as such, it is clear, that the purpose was to protect such billholders, only, as might, *bona fide*, in the course of trade, receive, as part of the State currency, the bills of her banks, payable in specie; and in the language of the plaintiffs'
137 bill, "constituting in part the circulating medium intended to be furnished by the said Bank in accordance with its charter."

After repudiation of the payment of the bills in specie by the banks; after they ceased to *circulate* as money; after the insolvency of the Bank; after the assets were finally exhausted; after, in correspondence with such destruction, the bills had sunk to the point, when their only market value was the money-changer's estimate of the chances of litigation, in these suits; the purpose of the guaranty, if such were intended by the Legislature; the equity of statute; as well as the equity of the case, originally contemplated between the guarantor and the person, injured by the failure of 138 the Bank, had entirely ceased. With it ceased, also the liability of the stockholders.

At the time of "failure," at the date of suspension, when the bills ceased to circulate, their character at once changed. The suspension of specie payment in 1860 was notorious. It was recognized as a fact by the Legislature of the State. The entire commercial world, who had been receiving the bills previously as currency, were informed of the fact of suspension. The act of suspension by the Bank was a public and general waiver of demand, and proclamation of refu- 139 sal to pay the bills *according to their tenor*. They stood, from that day, as dishonored paper. Like a note of an individual payable on demand, the Statute of Limitations began to run from date of refusal, whether upon demand, or waiver of demand. *Terry vs. Tubman, MSS., 1876.*

The *bona fide* holder who had received them as currency before the 29th November, 1860, could at any time within four years after that day, have filed his bill against the Bank, and made the question now made as to the liability of the stockholder as guarantor. The Bank was liable upon the 140 paper—the stockholder upon the case made upon the Statute. If the stockholder, in a suit so brought, could have shown that the billholder had received the bills from the counter of the Bank, issued *after* declaration of suspension, the defence was complete, because the contract was with the Bank upon its *delivery*, lawfully, of the promise to pay. That which distinguishes bank notes from other promises to pay on demand is, that it is supposed to be issued and re-issued. It has been ruled, that every new issuing by the Bank is a new

141 contract, dating from date of such issue, and, therefore, that the cause of action does not begin at the date of the bank note, but at date of issue and *presumed* re-issue. This date is presumed to continue, as long as the Bank continues to pay its bills, according to their tenor and according to law. The alleged guaranty, if it be a contract, would be presumed likewise to be a continuing one, as long as the Bank continued to redeem its notes in coin.

The moment, however, the Bank declared its intention not to redeem its bills in coin, it ceased to act under the powers
142 conferred upon it by its charter. Its Directors lost the authority in law to issue its bills—that authority was *expressly* by the charter to issue bills payable on demand in coin—all issues of bank notes by them subsequent to suspension were *ultra vires.* It was only to the ultimate payment of the bills issued by the Bank, *within its charter powers*, that the Legislature can be held to have intended to make the stockholders liable, and only upon a promise (lawfully made by a lawful delivery) to pay on demand in coin, that the guarantor can be held to have bound himself.

143 What does the Bank virtually say in every issue, or presumed issue of its bills, after declared suspension? "I give out again the promise to pay, but I am not acting in accordance with my charter; I am not paying my bills according to their tenor, or according to my charter, in coin, and I do not bind myself, hereby, to pay in coin. You need not demand payment in coin. In advance, I refuse payment, and I waive demand." The persons, who receive such bills, as well as those, who voluntarily take the position of one, who has so dealt with the Bank, or is presumed in law to have so dealt,
144 can have no claim on the guarantor, upon, or in accordance with, the charter.

If such defence by the guarantor would have been good, upon proof, against the billholder, who took the bills, from the bank, after notorious suspension of payment—still more would it be good against an avowed speculator, who purchased them, not as circulation, but as dishonored paper, of broken banks, eight or nine years after dishonor, and after they had wholly ceased to circulate as money, or to be issued by the bank.

The utmost, that such a purchaser could claim against the 145
insolvent bank itself, would be what was paid for the bills. He could only prove, along with the other creditors, against the assets for that sum.

If he intended to secure by his purchase the previous holder's claim, upon the stockholder, under the statute, two precautions should have been taken by him, viz:

1. To ascertain whether the previous holder had received the bills, while circulating as money and payable on demand in coin, in good faith, and in course of trade, and *not* from the
bank after suspension, and to secure himself with the means 146
of proving such title, and

2. To take from such *bona fide* holder in writing an assignment of such holder's right of action against the stockholders..

THIRTEENTH GROUND.

If the Court should construe the liability of the stockholder to be a guaranty of their payment, and that such engagement, under the statute, entered into, and became part of the bills of the bank, when lawfully issued, and while
negotiable (that is, before due,) and that the guaranty, thus, 147
was also negotiable; by the same rule, then, the guaranty ceased to be negotiable, when the bank bills *became due were dishonored* and ceased to be negotiable, as bank notes.

This occurred when the bank refused or ceased to redeem its bills. (*Kimbro vs. Bank of Fulton, 49 Ga., 421. Terry vs. Tubman, Mss. U. S. Sup. Ct., March, 1876.*)

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APPENDIX.

Charter of "*The Merchants' Bank of South Carolina, at Cheraw*," and other Statutes of the State, cited in argument.

On the 19th December, 1833, the State of South Carolina passed an Act, the title of which was:

"AN ACT TO INCORPORATE A BANK IN THE TOWN OF CHERAW."

The preamble (*Statutes at Large of South Carolina, Vol. VIII., p. 68*) reads thus: "Whereas it is beneficial to the citizens of this State, that a bank should be established in the Town of Cheraw, *therefore*"— 1

* * * * * * * * * *

The following are the clauses of the enactment deemed necessary to the decision of this case. After naming commissioners for receiving names of subscribers to the capital stock, the Act declares:

SEC. I. Such said subscribers * * * * then being stockholders, and all persons who may hereafter become stockholders, in the said Company, shall be, and are hereby, incorporated and made a corporation and body politic, by the name and style of "The Merchants' Bank of South Carolina, at Cheraw," and so shall continue until the first day of January, * * 1855. 2

SEC. IV. That the said corporation, by its name and style, shall be, and is hereby, made capable in law, to have, purchase, receive, and possess, enjoy and retain to it, and its successors, lands, rents, tenements, hereditaments, etc. * * * *; and the same to sell, etc. * *; and also to sue and be sued; plead and be impleaded; answer and be answered; defend and be defended, in courts of record, or in any other place whatsoever; and also to have and use a common seal * * *; and, generally, to do and execute all and singular such acts, 3 matters, and things, which may be deemed necessary and proper for the good government and management of said corporation; subject, nevertheless, to such regulations, restrictions, limitations, and provisoes, as shall hereafter be prescribed and declared.

SEC. XIV. That the said Bank shall not issue any bill or note for the payment of money, or commence discounting, until one-third part of its capital stock, *in specie, shall be deposited in its vaults.* * *

4 SEC. XVI. That the bills or notes which may be issued by the order of said corporation, signed by the President, and countersigned by the Cashier thereof, promising the payment of money to any person or persons, his, her, or their, or to the bearer, though not under the seal of said corporation, shall be binding and obligatory upon the said corporation, in like manner, and with the like force and effect, as upon any private person or persons, if issued by him, her, or them, in his, her, or their private capacity, and shall be assignable and negotiated in like manner, as if they were so issued by
5 such person or persons—that is to say, those which shall be payable to any person or persons, his, her, or their order, shall be assigned by indorsement, in like manner, and with like effect, as foreign bills of exchange or promissory notes now are; and those which are payable to any person or persons, or bearer, shall be negotiable and assignable by delivery only.

SEC. XVII. That the total amount of debts, which the said corporation shall at any time owe, shall not exceed three times the amount of its capital stock, exclusive of the amount
6 of money then actually deposited in the bank for safe keeping. And in case of excess, the directors, under whose administration such excess shall happen, shall be liable for the same in their private and individual capacity, and an action may, in such case, be brought against them, or any of them, their or any of their heirs, executors or administrators, in any court having jurisdiction, by any creditor or creditors of the said corporation, and may be prosecuted to judgment and execution, any condition, covenant, or agreement to the contrary notwithstanding. But this shall not be construed to exempt
7 said corporation, or the lands, tenements, goods or chattels of the same, from being also liable for said excess. And such of

the said directors as may have been absent when such excess
was contracted or created, or such as may have dissented
from the resolution, or act, whereby the same was so con-
tracted or created, may, respectively, exonerate themselves
from being thus liable, by forthwith giving notice of the fact,
and of their absence or dissent, to the stockholders, at the
general meeting of the stockholders, to be called for said
purpose."

SEC. XVIII. That the said corporation shall not be permit- 8
ted to purchase any public debt whatsoever, except stock of
the State, or of the United States, nor shall, directly or in-
directly, trade in any thing except notes, bills of exchange,
gold and silver bullion, or in the sale of goods really and
truly pledged for money lent, and not redeemed in due time,
or of goods which shall be the produce of its lands, neither
shall said corporation take more than at the rate of one per
centum discount for sixty days, for or upon its loans, or dis-
counts. That if the said corporation or any person or persons,
for the use of the said corporation, shall purchase, trade, dis- 9
count, or loan, contrary to the provisions of this Act; all and
every person or persons thus purchasing, trading, discount-
ing, or loaning contrary to the provisions of this Act, shall
forfeit and lose treble the value of the goods, wares, and
merchandise, notes, bills or loans, thus illegally purchased,
traded for, discounted for, or loaned; one half thereof to the
use of the informer, the other half to the use of the State.

XIX. That the bills or notes of said corporation originally
made payable, on demand, or which shall have become pay-
able, in gold or silver current coin, shall be receivable by the 10
treasurers, tax collectors, solicitors, and other public officers,
in all payments for taxes or other monies due to the State,
so long as said bank shall pay gold and silver, current
coin, for their notes. But, whenever there shall be a protest
on any of the bills or notes of said bank for non-payment in
specie, the Comptroller-General shall be authorized, and he
is hereby required, to countermand the receipt of the bills
and notes of the bank, in payment of taxes and debts due to
the State, unless good and satisfactory cause shall be shown
him by the said corporation for contesting in a Court of Jus- 11
tice the payment thereof.

XX. That dividends shall be made at least twice in each year, by the said corporation, of so much of the profits of said bank as shall appear to the directors advisable.

* * * * * * * *

XXI. That in case of the failure of said bank, each stockholder, copartnership, or body politic, having a share or shares therein at the time of such failure, or who shall have been interested therein, at any time within six months previous to such failure, shall be liable and held bound, individually, for any sum not exceeding twice the amount of his, her, or their share, or shares.

* * * * * * * *

12 Sec. XXIV. That the said bank shall not be authorized to issue bills under the denomination of five dollars.

On the 18th December, A. D. 1840, the Legislature of South Carolina passed

"AN ACT, to provide against the suspension of specie payments by the banks of this State." (S. L. Vol. xi., p. 100.)

Section I. * * * That the provisions of this Act shall be and become parts of the charters of every bank already incorporated within this State, which shall accept the
13 same, and also of every bank which shall at the present, or any succeeding session of the General Assembly, receive a grant of a charter, or any renewal, amendment or modification thereof, unless the Act granting such charter, renewal, amendment or modification, shall, in express terms, dispense with the said provisions.

Sec. II. Every bank which shall suspend the payment of current coin for its notes, or which shall declare a determination to suspend, or refuse payment of its notes, according to their legal obligation, in current coin, shall become liable to
14 pay to the State of South Carolina, at the expiration of every month after suspension or declaration, a sum of money, at the rate of five per centum per annum, upon the whole amount of its notes, which shall have been issued, in circulation at the commencement of the said month, until the said bank shall revoke its declaration, and shall lawfully redeem its notes when demanded, according to their legal obligation ; the said

sum of money to be recovered by action of debt, in any Court of competent jurisdiction.

Sec. III. The President or Cashier of each bank in this
State, shall, within the first six days of every month, make a 15
return, on oath, of the state of such bank * * * * * *
to the Comptroller General, which officer * * * *
shall publish the same in some public newspaper, for general
information. * * * * *

SCHEDULE.

Debts due by the Bank.

Capital Stock.
Bills in Circulation.

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Resources of the Bank.

Specie on hand. 16

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Sec. IV. Every bank whose officers neglect to comply
with the provisions embraced in the third Section of this Act,
shall forfeit to the use of the State, to be recovered by the
Comptroller General, one hundred dollars for each and every
day's neglect, to be recovered by action of debt, in any Court 17
of competent jurisdiction.

Sec. V. It shall be the duty of the Comptroller-General to
take all requisite measures for collecting the amounts of
money required to be paid to the State under the provisions
of the second Section of this Act; he shall have power to
examine the books of each bank, for the purpose of ascer-
taining the true amount of its notes in circulation, and any
officer of a bank who shall refuse to submit the proper books
of the bank to the Comptroller-General for the purpose afore-
said, shall be deemed guilty of a misdemeanor, and upon due 18

conviction, shall be subject to fine and imprisonment, at the discretion of any Court of competent jurisdiction.

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SEC. VII. Every bank in this State which has heretofore suspended the payment of its notes in legal coin, or which has declared its determination to refuse or suspend such payment, shall, on or before the first day of March next, notify the Governor of its acceptance of the provisions of this Act, and in case any such bank shall neglect to give such notice, the Governor shall forthwith cause legal proceedings to be
19 instituted by the Attorney-General, or Solicitor, against such delinquent bank, for the purpose of vacating and declaring void its charter.

On the 17th December, A. D. 1841, the Legislature of South Carolina passed

"AN ACT, to incorporate certain Village Societies and Companies, and to renew and amend certain charters heretofore granted, and to establish the principles on which charters of incorporation will hereafter be granted." (S. L., Vol. xi, p. 168.)

20 By the XLI Section, it is enacted

"That it shall become part of the charter of every corporation, which shall at the present, or any succeeding session of the General Assembly, receive a grant of a charter, or any renewal, amendment, or modification thereof, (unless the Act granting such charter, renewal, amendment, or modification, shall in express terms except it,) that every charter of incorporation granted, renewed, or modified, as aforesaid, shall at all times remain subject to amendment, alteration or repeal, by the Legislative authority."

21 On the 19th December, A. D. 1843, the Legislature passed

"AN ACT, to amend an Act, to provide against the suspension of specie payments by the Banks of this State." (S. L., Vol. xi, p. 259.)

SEC. I. (Permits certain Banks to accept the provisions of the former Act.)

SEC. II. Nothing in this Act contained shall be construed to exempt the said Banks from the forty-first section of an Act," (the above Act of 17th December, A. D. 1841;) "but

the provisions of the said section, and also of the Act mentioned in the first section of this Act," shall be taken and 22
held as part and parcel of the charter of each corporation, which shall so accept as aforesaid.

SEC. III. The Governor, upon being notified of the said acceptance, shall cause all legal proceedings pending against the Banks so accepting, for the purpose of vacating its charter, to be forthwith discontinued.

SEC. IV. The proceedings which have been instituted and are now pending against any other incorporated bank within this State, in virtue of said Act to provide against the suspension of specie payments by the banks of the State, shall 23
be forthwith discontinued.

SEC. V. If any incorparated bank in this State, which shall not have duly accepted the terms and provisions of the said last mentioned Act, so that the same shall have become part of its charter, shall hereafter suspend the payment in legal coin of the bills and notes of the said bank, issued by the said bank as part of the currency or circulating medium of the State, or shall suspend the payment in such coin of the monies placed in the said bank on deposit, or shall declare its determination to suspend, or refuse such payment, 24
the Governor for the time being, shall forthwith cause legal proceedings to be instituted against such bank to vacate its charter; but no such proceedings shall be prosecuted to final judgment, nor shall final judgment for the State be entered thereon, until the expiration of the Session of the General Assembly, next succeeding the institution of such proceedings.

On the 20th December, A. D. 1853, the Legislature passed "An Act to re-charter the Merchant's Bank of South Caro- 25
lina, at Cheraw." (S. L., Vol. XII., p. 248.)

Sec. I. Charter renewed for twenty-one years.

Sec. II. That said bank shall, during the said term of twenty-one years, be permitted to enjoy all the privileges, rights, powers, immunities and benefits which it now enjoys under the existing charter of said bank; and the said bank shall be subject to all the provisions of an Act passed the eighteenth day of December, 1840, entitled "An Act to

provide against the suspension of specie payments by the
26 banks of this State;" and also to such regulations and restrictions, as the Legislature shall from time to time impose.

Sec. III. (*Liable to taxation.*)

Sec. IV. That in case of the failure of said Merchant's Bank of South Carolina, at Cheraw, each stockholder, copartnership, or body politic, having a share or shares in the said bank at the time of such failure, or who shall have been interested therein at any time within twelve months previous to such failure, shall be liable and held bound, individually, for any sum not exceeding twice the amount of his, her or
27 their share or shares.

Sec. V. (*Not to pay out bills of other banks.*)

Sec. VI. The bills or notes of the said Merchant's Bank of South Carolina, at Cheraw, shall be receivable by the treasurer, tax collector, and other public officers, in payment for taxes and other moneys due to the State, no longer than while the said Bank shall promptly pay on demand gold or silver current coin for its notes; but whenever the said bank shall refuse or delay to pay any of its notes in gold or silver current coin, or whenever there shall be a protest on any of
28 the bills or notes of the said bank for non-payment in specie, it shall be the duty of the Comptroller-General to forbid the receipt of the bills or notes of the said bank for taxes and other public dues, unless satisfactory reasons be shown him by the said bank for contesting in a Court of Justice the payment of such protested bills or notes.

Sec. VII. * * * *

Sec. VIII. (Makes it liable to A. A. 1840, after February 1, 1854.)

In 1857, (at a time of financial convulsion) the Legislature
29 passed "An Act for the suspension of certain sections of certain Acts and for other purposes." (S. L. Vol. XII, p. 630.)

Section I. That the operation of the second section (of Act 1840,) be and the same is hereby suspended until (1st January, 1859,) on the express condition that no execution issued upon judgments already obtained, or hereafter to be obtained, by any of the non-specie paying banks, shall be enforced until such banks resume specie payments; *provided,*

nevertheless, that each debtor, against whom the banks obtained judgment and issued execution thereon, shall pay to the banks to whom they be so indebted interest upon the whole 30
amount * * * * *

SEC. II. That the operation of the 5th section (of Act to re-charter Merchant's, Planter's and Mechanic's Bank, etc., 16th December, 1852,) and all clauses and sections of Acts re-enacting the provisions of said section, and applying the provision thereof to all or any of the Banks of this State, incorporated since the aforesaid Act, be and the same are hereby suspended until the first day of January, 1859. (See V Section of Act re-chartering Merchant's Bank of Cheraw, same with 5th section of P. and M. B.) 31

SEC. III. That from and after * (1st January, 1860,) * if the bank notes issued by any bank, and in circulation or out of possession of the bank, shall at any time exceed, for more than thirty successive days, three times the amount of gold and silver coin and bullion in possession of the bank, as its own property, and at its banking house, such bank shall forfeit five hundred dollars, for each and every successive day during which such excess shall continue, to be recovered by action of debt at the suit of the State; and in order that such excess, when it exists, may be apparent, it 32
shall be the duty of the President and Cashier of every bank of issue, on Monday of every week, to transmit to the Comptroller-General an account of the amount of bank notes of such bank, in circulation or out of possession of the bank, on each and every day during the week, ending on the next preceding Saturday; and also an account of the amount of gold and silver coin and bullion in the possession of the bank, as its own property and at its own banking house on each and every day of the same week. * * * * *

SEC. VI. For the purposes of this Act, the words "bank 33
note" shall be understood to include all bills, notes, checks, or other obligations, of any bank, made payable to bearer on demand, or in any form of words whatsoever written, printed, or engraved, so as to be circulated and used as paper money or currency; and the words "banks of issue" shall be understood to include every bank having lawful authority to issue its own bank notes.

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Judge Davis

Supreme Court of the United States.

James P. Carroll *et al.*
vs.
J. and T. Green.
No. 216.

APPELL~~EE'S~~ees' SUPPLEMENTAL BRIEF.

"An act to recharter the Planters' and Mechanics' Bank of South Carolina, the Union Bank of South Carolina, the Commercial Bank of Columbia, South Carolina; and to incorporate the Exchange Bank of Columbia, the Farmers' and Exchange Bank, and the People's Bank of Charleston, the Bank of Newberry, the Bank of Chester, the Bank of Sumterville, the Planters' Bank of Fairfield, and the Western Bank of South Carolina, at Anderson.

"I. *Be it enacted* by the Senate and House of Representatives, now met and sitting in General Assembly, and by the authority of the same, That the charter of the Planters' and Mechanics' Bank of South Carolina, be and the same is hereby renewed for the term of twenty-one years from and after the first day of January next, which will be in the year of our Lord one thousand eight hundred and fifty-three.

"II. That said Bank shall, during the said term of twenty-one years, be permitted to enjoy all the privileges, rights, powers, immunities, and benefits which it now enjoys under the existing charter of said Bank, and the said Bank shall be subject to all the provisions of an act, passed on the eighteenth day of December, in the year of our Lord one thousand eight hundred and forty, entitled 'An act to provide against the suspension of specie payments by the Banks of this State,' and also to such regulations and restrictions as the Legislature shall from time to time impose.

"III. That the capital stock and other property of the said Planters' and Mechanics' Bank, and all the other Banks hereby rechartered or incorporated, shall be liable to taxation in the same manner as the capital stock and property of individuals and of other corporations. *Provided*, That no municipal corporation shall tax the capital stock or profits of said Banks, without authority first had and obtained from the Legislature.

"IV. That in case of the failure of said Bank, each stockholder, copartnership, or body politic, having a share or shares in such Bank, at the time of such failure, or who shall have been interested therein at any time within twelve months previous to such failure, shall be liable and held bound individually for any sum not exceeding twice the amount of his, her, or their share or shares.

"V. It shall not be lawful for the said Bank, except in settlements with other Banks, to pay or deliver out in payment or satisfaction of any demand upon it, or by way of loan or discount, any bill, note, check, or other paper of any other Bank. And for each and every violation of this section, the said Bank shall be subject to the payment of one hundred dollars, to be recovered by action of debt, at the suit of the State, and appropriated, one-half to the use of the State, and the other half to the informer.

"VI. The bills or notes of the said Bank shall be receivable by the Treasurers, Tax Collectors, and other public officers, in payment for taxes and other moneys due to the State, no longer than while the said Bank shall promptly pay, on demand, gold and silver current coin for their notes; but whenever the said Bank shall refuse or delay to pay any of their notes in gold or silver current coin, or whenever there shall be a protest on any of the bills or notes of the said Bank for non-payment in specie, it shall be the duty of the Comptroller General to forbid the receipt of the bills or notes of the said Bank for taxes and other public dues, unless satisfactory reasons be shown him by the said Bank for contesting, in a court of justice, the payment of such protested bills or notes.

"VII. That the charters of the Union Bank of South Carolina, and the Commercial Bank of Columbia, South Carolina, be also renewed, from the period at which their charters respectively expire, for the same time and with the same rights, privileges, and obligations, and subject to the same regulations and restrictions as hereinbefore provided in relation to the said Planters' and Mechanics' Bank.

"VIII. That the following eight Banks are hereby incorporated, to be named and known as follows, to wit: One in Columbia, to be known as the 'Exchange Bank of Columbia,' with a capital of five hundred thousand dollars, and with the privilege of increasing it to one million; one at Charleston, to be known as the 'Farmers' and Exchange Bank of Charleston,' with a capital of one million of dollars; one at Chester, to be styled the 'Bank of Chester, South Carolina,' with a capital of three hundred thousand dollars; one at Newberry, to be styled the 'Bank of Newberry, South Carolina,' with a capital of three hundred thousand dollars; one at Winnsboro', to be styled the 'Planters' Bank of Fairfield,' with a capital of three hundred thousand dollars; one at Anderson, to be styled the 'Western Bank of South Carolina,' with a capital of three hundred thousand dollars; one at Sumterville, to be styled the 'Bank of Sumterville,' with a capital of three hundred thousand dollars; and one at Charleston, to be styled the 'People's Bank of South Carolina,' with a capital of one million dollars; which said Banks shall have and possess the same rights and privileges, and be subject to the same duties, liabilities, obligations, regulations, and restrictions herein provided for the said Planters' and Mechanics' Bank, and Union Bank and Commercial Bank. The capital stock of each of the said eight Banks shall be divided into shares of twenty-five dollars each.

"IX. The Comptroller General shall be authorized to appoint fit and proper persons as Commissioners at Columbia and Charleston, or elsewhere, as he may decide, to open subscriptions, between the first day of April and the first day of July next, to the capital stock of the eight Banks respectively named in the foregoing section, and to require five dollars on each share from subscribers in specie or notes of specie paying Banks of this State, and shall deposit the same in such Bank as a majority of the subscribers shall designate, for the use of the respective Banks, on the first meeting of the subscribers. That as soon as the subscription shall respectively be filled to the amount of the capital stock of each of the Banks respectively hereinbefore named, it shall be the duty of the Comptroller General to notify said subscribers to meet, who shall therupon become a body corporate, with the same privileges and rights as the stockholders of the Banks whose charters are hereby renewed, and make all by-laws not inconsistent with the laws of the land, to provide for the election of officers, the division of the capital stock as aforesaid, the payment of the subscriptions and all arrangements to put into operation the charters hereby granted. *Provided*, That no one of the Banks hereby incorporated for the first time, shall issue any bill or note or transact business until satisfactory proof shall be given to the Comptroller General that one-half of the capital stock of each Bank has been paid, in one moiety thereof in gold or silver, and the other moiety in notes of specie paying Banks. And, *provided further*, That in case of over-subscription to the stock of any of the foregoing Banks, the said subscription shall be reduced *pro rata*, but no subscription of five shares shall be reduced; and it shall not be lawful for any person to subscribe for shares in the name of other persons.

"X. No loan shall be made on pledge of stock of any of the said Banks until one year after the whole capital shall have been paid in.

"XI. The officers of the Banks above named shall not be exempt from militia duty or from serving on juries."

It is proper to say that the provision as to individual liability contained in the 4th section of the above act of 1852 is found in the renewed charters of the Planters' and Mechanics' Bank and the Union and Commercial Banks.

The "rules and regulations" of the renewed charter of the Planters' and Mechanics' Bank are found in McCready's brief, p. 8.

Stat. of Limitations of South Carolina.

"That all actions of account and upon the case (other than such ~~as~~ accounts as concern the trade of merchandise between merchant and merchant, their factors or servants) all actions of debt grounded upon any lending or contract without specialty, all actions of debt for arrearages of rent reserved by indenture, shall be commenced and sued within four years next after the cause of such actions or suits, and not after."

2 Stats. at Large of South Carolina, p. 585, sec. vi.
Limitation Act of 1712, founded on the English Statute of Limitations of 21 Jac., 1 c. 16, sec. 3.

W. W. Boyce,
Appellant's Counsel.

SUPREME COURT

OF

THE UNITED STATES.

OCTOBER TERM, 1875. No. 216.

JAMES P. CARROLL, *et al.*, *Appellants*,
vs.
JOSHUA AND THOMAS GREEN, *et al.*, *Appellees.*

Argument on behalf of Harvey Terry,

Co-complainant.

R. O. Polkinhorn, Printer, Washington, D. C.

In Supreme Court of the U. S.

OCTOBER TERM 1875. No. 216.

JAMES P. CARROLL, *et al.*, *Appellants*,
vs.
JOSHUA AND THOMAS GREEN, *et al.*, *Appellees.*

Argument on behalf of Harvey Terry, Co-complainant.

1. The main question involved in this case is as to the statutory liability of the stockholders of the Exchange Bank of Columbia, South Carolina.

In order to arrive at an intelligent and clear opinion in this case, it may be well to examine into the history and rise of the system of issuing paper money in the colony and State of South Carolina, and trace the system through the different periods of its existence up to the present day.

By act of May 8, 1703, the first bills of credit or paper money issued in South Carolina was authorized by the colonial assembly and issued by the colonial treasurer to the amount of £6,000. Bills indented, numbered, signed, countersigned and sealed, to bear interest, legal-tender for taxes. (2 Vol. Stat. S. C. 206, sec. 13, 15.

Act April 9, 1706, sec. 7. Bills of credit maintained. 2 Vol., Stat. S. C. 276.)

Act July 5, 1707, sec. 1, £8,000. New bills of credit issued, signed, sealed, and indented a legal tender for debts and to redeem old bills of credit. (2 Vol. Stat. S. C. 302.)

These acts and issues of paper money were followed by act of June 17, 1712, known as the "Bank Act," whereby bills of credit were issued to the amount of £52,000, of which bills of credit £32,000 were to be loaned out at interest to individuals to use and circulate as money, by said individuals giving security by bond and mortgage with approved sureties, to the treasurer of the colony in double the amount of the bills of credit thus loaned, [to indemnify and insure to the public the repayment of the loan and interest thereon to the colony. (Sec. 3, 4, 5 and 6.)

Bills of credit, a legal tender, signed, sealed, and stamped. (Sec. 14, 17, 18.) Other acts repealed. (Sec. 23, p. 764.)

This appears to be the first experiment of banking in South Carolina. (9 Vol. Stat. 759.)

From 1712 to 1722, several acts were passed by the assembly of said colony for the issue of bills of credit known as rice bills and war bills, for the relief of the colonial treasury, but said bills of credit were in accordance, with the former issues, which was followed by act of February 23, 1722. New bills of credit issued in conformity to act of 1712, to the amount of £120,000, to take up and replace the worn out currency then in circulation, and enable the public treasury to meet its liabilities; commissioners to call in old bills of credit and redeem them with new bills; old bills outstanding, barred and worthless at the end of twenty-two years. (3 Vol. Stat. 188.)

Followed by acts of February 15, 1723; August 30, 1731; May 4, 1733; September 22, 1733; and June 7, 1735, for printing new bills and calling in and cancelling old bills. (3 Vol. Stat. 219, 305, 349, 368 and 411,) followed by (bank act continued) act May 29, 1736, to make current £210,000 of bills of credit, (preamble,) to be put on a sure, equitable and lasting foundation, &c.; loans of bills of credit to be made upon security of double the amount of loan; legal tenders for all sums of money due on records, judgements, mortgages, specialties, bonds or other contracts. (3 Vol. Stat. 427, sec. 10,) followed by act June 17, 1746, for stamping, emitting and making current £210,000 of bills of credit, loaning them on security, providing a sinking fund, &c. (3 Vol. Stat. 671,) followed by act of May 20, 1748, for stamping, issuing and making current £106,500 of bills of credit, and exchanging them for defaced and worn bills of credit then outstanding, &c. (3 Vol. Stat. 702,) followed by act May 16, 1752, to print and exchange new bills for defaced and worn bills of credit. (3 Vol. Stat. 775,) followed by act August 23, 1769, for stamping, issuing and making current £106,500 of new bills of credit, and exchanging them for defaced and worn bills. (4 Vol. Stat. 312,) followed by act February 8, 1779, for stamping, printing and issuing $4,000,000 of bills of credit to aid the treasury of South Carolina—bills a legal tender. (4 Vol. Stat. 461.)

Act February 6, 1782, repeals all former acts, making bills of credit a legal tender for debts due; which said act caused the discredit and extinguishment of the bills of credit of that date.

(4 vol. Stat., 508; County CourtAct March 24, 1785, sec. 44.)

" *And be it further enacted by the authority aforesaid*, That all judgments, bonds, bills, promissory notes, or other writing, with or without seal, where the debt or demand is liquidated, and signed with the hand of the debtor, such writing shall constitute specialty for such debt, and all suits to be commenced thereon in the county courts shall be by action of debt, any law, custom, or usage to the contrary notwithstanding." 7 vol. Stat., 232, sec. 44, act December 18, 1799, county courts abolished; but no part of said act repeals sec. 44 of act March 24, 1785. (See repealing clause 18, 7 vol. Stat., 293.) And appellee submits that said sec. 44 of act 1785 stands on the statute books of South Carolina to-day, without alteration or repeal, except it be by implication or judicial decisions; and the appellants declare in their briefs that no judicial decisions have been had in South Carolina involving the validity of these bank questions.

The fact appears that in 1795 it was contended in the courts of this State that notes of hand, not under seal, had rank of equal dignity and equality in equity and entitled to share pro rata in the distribution of the estates of insolvent decedents with bonds or other instruments under seal. (1 Bay, S. C., 445.)

In this case the court held that the county court act of 1785 in no way changed the priority of the instruments in question, but that the right of distribution of the insolvent's estate was controlled by the executors' act of 1789, and the common law rule; but in the adjudication of this case no denial of the plea was made that said note of hand constituted a specialty.

We now come to the period of time when the banks of South Carolina came into existence.

The first charters were granted in the year 1801, (8 vol. Stat., 1,) and are not materially different from the charter of the bank now under consideration in this cause.

The Planters' and Mechanics' Bank of South Carolina was chartered by act December 20, 1810, which said act and the subsequent amendments thereto constitute the text of the present charter under consideration, and said charter, among other things, contains these words:

"*And be it further enacted by the authority aforesaid*, That in case of the failure of the bank each stockholder, copartnership, or body politic, having a share or shares therein at the time of such failure, or who have been interested therein at any time within twelve months previous to such failure or bankruptcy, shall be liable and held bound for any sum not exceeding twice the amount of his, her, or their share or subscription; and that the stock of said corporation shall be assignable and transferable according to such rules as shall be instituted in that behalf by the by-laws and regulations of the said corporation. * * * * The bills obligatory and of credit, under the seal of said corporation, which shall be made to any person or persons, shall be assignable by indorsements thereupon, under the hand or hands of such person or persons, and of his, her, or their assignee or assignees, and so as absolutely to transfer and vest the property thereof in each and every assignee or assignees successively, and to enable such assignee or assignees to bring and maintain an action thereupon in his, her, or their own name or names; and bills or notes which may be issued by order of the said corporation, signed by the president, and countersigned by the principal cashier or treasurer thereof, promising the payment of money to any person OR PERSONS, HIS, HER, OR THEIR ORDES, OR TO THE BEARER, THOUGH NOT UNDER THE SEAL OF THE SAID CORPORATION, SHALL BE BINDING AND OBLIGATORY UPON THE SAID CORPORATION IN LIKE MANNER, AND WITH THE LIKE FORCE AND EFFECT, AS UPON ANY PRIVATE PERSON OR PERSONS, IF ISSUED BY HIM, HER, OR THEM IN THEIR PRIVATE CAPACITY OR CAPACITIES; AND SHALL BE ASSIGNABLE AND NEGOTIBLE

IN LIKE MANNER AS IF THEY WERE SO ISSUED BY SUCH PRIVATE PERSON OR PERSONS, THAT is to say, those which shall be payable to any person or persons, his, her, or their order, shall be assigned by endorsement in like manner and with like force and effect as foreign bills of exchange now are; and those which are payable to bearer shall be negotiable and assignable by delivery only." (8 vol. Stat., 18, sec. 7.)

Also, by sec. 10 of said act it was required that eight hundred shares of the capital stock of said bank be transferred to the State for the benefit of the State, as a (bonus or) consideration for said franchise granted. And the following section reads as follows:

"Sec. 11. *And be it further enacted by the authority aforesaid*, That in case of the failure or bankruptcy of the said bank, the State aforesaid shall not (any clause or provision in this act to the contrary notwithstanding) be liable or held bound to pay any portion or part of any sum or sums of money for which the said bank shall or may fail or become bankrupt." (8 vol. Stat., 21, sec. 11.)

Act December 21, 1811, amending charter; bills of the bank receivable at the State treasury for taxes. 8 Vol., Stat. 23, sec. 4.

This last act was followed by act of December 13, 1813, chartering "The Bank of the State of South Carolina," with the general provisions of banking as heretofore referred to—with this exception "that no private stockholders existed therein" as in the former banks.

That by the sixth section thereof, the total amount of the debts which the said corporation shall at any time owe, whether by bond, bill, note, or contract, shall not exceed twice the amount of its capital, over and above the moneys then actually deposited in the bank for safekeeping, unless the contracting of any greater debt shall have been previously authorized by a law of this State. In case of excess, the directors under whose administration it shall happen shall be liable for the same in their private capacities and an action of debt may in such case be brought against them, or any of them, their, or any of their heirs, executors, or administrators, in any court of this State having jurisdiction, by any creditor or creditors of the said corporation, and may be prosecuted to judgment and execution; any condition, covenant and agreement to the contrary notwithstanding. But this shall not be construed to exempt the said bank, or the lands, tenements, goods or chattels of the same, and on their insufficiency, the State of South Carolina, from being also liable for, and chargeable with, the said excess. 8 Vol. Stat. 24.

And this said act was followed by various amendments up to the act of December 20, 1826, admitting private stockholders in said bank of the State with this significant provision. "Fourth, individuals shall be permitted to subscribe to the capital stock of the bank, any sums, to an amount not exceeding $1,600,000, in shares of $100 each. Fifth, and be it further enacted that the private stockholders shall be liable for the debts, losses and liabilities of said bank, in proportion to the capital owned by them." 8 Vol., Stat. 50.

The Exchange Bank of South Carolina was chartered by act of December 16, 1852. 12 Vol., Stat. 212.

And said charter is but the counterpart of the charter of the said Planters' and Mechanics' Bank, already quoted and referred to. In the original act chartering the Planters' and Mechanics' Bank, section 5, page 4, we find "The total amount of the debts which said corporation shall at any time owe, whether by bond, bill, note, or contract, shall not exceed three times the amount of its capital, over and above the moneys then actually deposited in the bank for safe keeping, unless the contracting of any greater sum shall have been previously authorized by a law of the State. In case of excess the directors under whose administration it shall happen, shall be liable for the same, in their private capacities, and an action of debt may in such case, be brought against them or any of them, their or any of their heirs, executors or administrators, in any court in this State, having jurisdiction; by any creditor or creditors of the said corporation, and may be prosecuted to judgment and execution, any condition, covenant and agreement to the contrary notwithstanding. But this shall not be construed to exempt the said corporation, or the lands, tenements, goods, or chattels of the same, from being also liable for, and chargeable with the said excess. Such of the said directors as may have been absent, when such excess was contracted or created, or who may have dissented from the resolution or act whereby the same was contracted or created may respectively, *exonerate themselves from being individually liable* by entering, if present, their dissent on the books of the bank, at the time the debt may be so contracted, and *forthwith giving notice of the fact to the stockholders.*"

The question of the liability of the stockholders of the Exchange Bank of South Carolina, rests upon the whole charter of said corporation, and said statute of incorporation ought not to be divided up into sections and one section or part construed to mean one thing, and another section or part construed to mean another thing, but the said statutes of incorporation should be taken as a whole and a true and just construction of the whole statute defined. The statute in question is already before the court. 6 Wallace, 395. 6 United States v. Hartwell.

The great idea of a charter of incorporation of any body politic is, that the body politic so incorporated is created a personage in the eye of the law, and that all the corporated are merged in that body, so that they cease to be individuals in whatever concerns the corporation, and for all legal purposes said corporation is considered the individual, but the members composing said corporation, are not strangers to it, they are not barred by the act of incorporation from interest, profit and advantage, thereby and therein derived, but the individual members of said corporation are the beneficiary thereof, by whose acts the corporation is put into existence, managed and operated by the officers and agents selected by the stockholders, for whose use the revenues of said corporation is directed, accruing under the use of the franchise so granted; and although said persons as stockholders are merged into the corporation for the purposes of perpetual succession and the transaction of business, yet in equity such persons are and should be considered as principals or trustees, of the creature of their own organization: and in equity ought to be liable for the debts and liabilities incurred by the creature of their own organization; and this co-complainant hereby submits that the statute in question in this cause has so made said stockholders liable under the statute.

The legislature in effect say "we grant a charter to you upon the express condition that you (stockholders) maintain the solvency of the corporation; that in case of failure each stockholder shall be liable and held bound individually, for any sum not exceeding twice the amount of his shares: take your corporate franchise, use it for your own benefit, profit and advantage; but have a care that you maintain the corporation solvent, because in case of failure, we hold you individually (which means your property personally for double the amount of the shares that you hold in the bank) for the payment of any debt due by the corporation at the time, or incurred by its failure.

We grant to you the right to make pieces of paper in certain form, and to circulate the same as money upon the public, upon the condition that you redeem and pay to the bearer on demand, and if your principal, the corporation fail, you as stockholders and coöbligors must respond; in other words we constitute you (stockholders) as trustees and your property to double the amount of your stock, as a trust-fund held by you for the benefit of the creditors of said bank. You must pay the value of your stock into the corporation as capital in trade. The corporation is allowed to contract debts to the amount of three times its capital. You as stockholders must be security (liable and held bound) for the full amount of the debts that the said corporation is allowed to contract; you have paid your shares as one third part of that sum, you shall be liable and held bound for any further part of the remaining two-thirds of the debts or liabilities that said bank is so allowed to contract that may be due and unpaid in case of failure."

It is a rule of law that the courts in construing a statute " will give it that natural and reasonable construction, and application intended by its makers " and that rule of law is particularly applicable to this case.

This leads us to inquire—

1. What was the public necessity for the statute, and
2. What was the object to be obtained by it?

The public necessity for the issue of paper money is expressed in the title of almost every act granting the right to issue bills of credit, to circulate as money (from June, 1712, Bank Act), up to the date of the National Currency Act of the United States, February 25, 1863, which is for the accommodation of the people, the expansion of trade and commerce and to facilitate exchanges. Such acts always have been intended for the benefit of the public, and the use of the public, and the same is hereby referred to as the proper and sufficient explanation.

The object to be attained by every law is the protection of the people or a benefit to the people; and the charter of the Exchange Bank of South Carolina cannot be considered an exception to the rule. When the law grants the right of franchise to a corporation to issue its bills of credit to circulate as money into the hands of the public, that law uniformly enacts safeguards and statutes of protection to the public against loss thereby.

By the bank act of 1712, the commissioners loaned out the bills of credit to private parties to circulate said bills of credit as money, by said parties giving security to said commissioners in double the amount of the bills of credit thus circulated, as security for the repayment of the same, to secure the public against loss. This system of circulating bills of credit in the colony of South Carolina existed until the close of the revolution for independence (for about seventy years,) and it is presumed that this feature of the old bank act was engrafted upon that part of the personal liability clause of the charter of the Exchange Bank, to wit: "That each stockholder shall be liable and held bound individually for any sum not exceeding twice the amount of his, her, or their shares." Under the bank act the colony was the principal who issued the bills of credit and was liable for their payment. Under the charter of the Exchange Bank, the corporation is the principal, who issued the bills, and under the statute quoted, the corporation and stockholders are jointly liable, in case of failure, for the payment of the bills of credit issued and circulated as money into the hands of the public.

In the national currency act of the United States, heretofore referred to, full provision is made for the protection and safety of the public for the repayment and redemption of the paper bill issued. Not only is it required that the full capital of the bank shall be paid in, and that bonds of the government of the nation shall be deposited as security to the amount, or exceeding the amount of bills that is allowed by law to be issued by the bank, but in addition thereto, the statute contains these words: "for all debts contracted by said association for circulation, deposits or otherwise, each share-holder shall be liable to the amount at their par value of the shares held by him in addition to the amount invested in such shares." (12 U. S. Stat. 668, sec. 12.)

But the appellants (or rather their volunteer assistants, McCrady and others), inquire "to whom liable; for what liable; and how liable." (McCrady and other's brief, p. 2.)

These questions may be fully answered by that principle of law, "that all statutes of the same commonwealth which relate to the same subject may be taken to be one system and construed together. I think the true and correct object of that clause of the charter of the Exchange Bank now under consideration may be thus clearly and fully defined and applied. In the charter of the Planter's and Mechanic's Bank, by its tenth section, eight hundred shares were transferred to the State for the benefit of the State as heretofore recited; and by the eleventh section of said act, as herein recited, the State of South Carolina, as a stockholder in said bank, in case of its failure, was specially exempted from the payment of any sum or sums of money for which the said bank shall or may fail or become bankrupt. If the stockholders were not liable to pay the bills of the bank in case of its failure to the holders thereof, why exempt the State as a stockholder from the liability to pay any sum or sums of money for which the said bank may fail or become bankrupt. If the liability of the stockholders of the Planter's and Mechanic's Bank to pay any sum or sums of money for which the said bank may or shall fail or become bankrupt, accrued to the State, then why exempt the State from that liability which accrued to herself? But if the liability accrued to the holders of the bills, the reason for such exemption is obvious.

Again, the act of December 13, 1813, chartering the bank of the State of South Carolina, by the sixth paragraph of said charter enacted, that in case of the over-issue of bills or debts incurred by said bank, the directors, under whose administration the same occurred, should be liable for the same in their private capacities, and an action of debt maintained, and judgment and execution had against them or their heirs, by any creditor or creditors of the said corporation; but this shall not exempt the said bank or the lands, tenements or property of the same, *and on their insufficiency, the State of South Carolina from being also liable for*, and chargeable with said excess (there being no private stockholder), the bank being a State institution.

Why should the State be thus liable if the liability, in case of failure, was a penalty and accrued to the State?

Again, by act of December 26, 1826, provision was made for admitting private stockholders in the bank of the State of South Carolina. "Paragraph five,—that the said private stockholders shall be liable for the debts, losses and liabilities of said bank in proportion to the said capital owned by them." The two foregoing sections or parts of the charter of the bank of the State of South Carolina being construed together point very conclusively "for what liable: to whom liable; but Mr. McCrady and others, on brief, page 5, * omit to quote from the charter of the bank of the State," a very prudent omission.

But again, by act of————, 1824, the bank of Cheraw was chartered and the following clause inserted in that charter, to wit: Section 12, "And be it further enacted, &c., that the said corporation shall be bound at all times to pay specie for their paper if demanded, and if the said corporation shall fail to redeem its notes when presented, the stockholders shall be liable for the same in their private and individual character, and an action in such case may be brought against them, their heirs, executors or administrators in any court having jurisdiction, as in other cases, and may be prosecuted to judgment and execution." (8 Vol., Stat. 48.)

The foregoing section being construed in connection with the two preceeding sections of the bank of the State herein quoted, ought to throw some light upon the question of "to whom liable, and how liable," but it may not have developed the fact, "for what liable," but the same statute that gave life to the corporation gave authority to contract debts and issue bills of credit to the public, and set out how the said corporation should be liable "in the same manner as if issued by any person or persons in their private capacity." This would not be so under the common law. The bank bills sued on in this suit, and in evidence in this cause, if made in the same form, executed in the same words, and by the same parties without the act of incorporation, would have been illegal and void, and of no value, and therefore it is that a bank bill is of higher dignity, and of greater validity than a note of hand; a bank bill is the creature of the statute; it cannot be made without the statute, and the power that made the statute made it legal for the corporation to execute and circulate said bank notes as money into the hands of the public; and as it has been herein shown, the same power that in 1712 issued bills of credit, also enacted statutes as safeguards to protect the public from loss, and such rule of law continues to the present day, as shown in the National Currency Act (before quoted), and the present statute under consideration cannot be considered an exception to that rule, but complainant submits that said statate is in conformity to said rule.

If the statute is valid, the bank notes are valid, and the defendants say that these bank notes sued on were all issued before the year 1862, because at that date confederate currency came into use, and none of said bank notes were paid out after that date, and consequently said bank notes sued on, were issued upon a specie basis and for a gold value, and " for what liable " is the sum set out in the bills sued on, the sum proved before the master to be due in the cause.

To whom is a note of hand, bond, or other negotiable paper due, after it has been executed and circulated for gold value? I answer to the bearer and owner thereof; and the statute says the bills shall be payable to the bearer, and the notes proved in the cause, were made payable to the bearer. The liability of stockholders in the Exchange Bank is for the safety, security, and benefit of the owners of the bank bills of the bank, as the public into whose hands they were circulated as money; and the right of action of complainants exists in ex-contractu, upon the promise to pay the liquidated amount therein set out. The corporation was allowed by law to issue bills, and contract debts, to three times the amount of its capital. The stockholder was required to pay in the amount of his subscription for shares, and became further liable for any sum not exceeding twice the amount of his said shares subscribed; his cash paid for stock, and his personal liability as a stockholder equals the maximum liability that the corporation could legally incur. An ex-contractu liability payable to the bearer, could not in any possible way become a penalty or an ex-delicto liability, payable to the State when the State did not own the bills. 2 Bouvier's Law Dictionary, 318 Penal Statute, defined.

It is not pretended that the State has any property or interest in the bank bills sued on. But for the sake of argument of this case, admit the theory of the appellants that the liability of the stockholders accrues to the State, and that the holders of the bills have no right of action thereon; what is the consequence of this version of the case? It destroys the rights of the holders to any payment of their bills; they are divested of their property without payment or remedy, and the objects of the law, to wit: the protection of the public in the security of their bank bills is set at nought and destroyed, the laws of transfer and deliverey annulled, and the system of the public use of paper money is brought into disrepute thereby, and a fraud is perpetrated on, instead of protection given to, the public. It is in opposition to all the principles of honesty, equity, right, and justice, by destroying the common sense construction of a statute that has been in force for more than one hundred years, and to render inoperative that protection to the public for which the law was intended. Such version of the statute cannot be correct; reason, justice, and the principles upon which statutes are founded, contradict it. The statute must be construed to mean what its makers evidently intended it to mean, that it was a guarantee, a security or an obligation to secure the payment of all of the debts contracted, and bank bills issued by the bank, and as the law directed the bills made payable to the bearer, it is the reasonable construction of the law, that the liability of the stockholders accrued to the bearer of the bills.

But I go further; I submit to this Honorable Supreme Court that the legislature of South Carolina has clearly and plainly indicated to whom the right of action belongs in the subject-matter in this suit. The further evidence referred to is found in act of March 13, 1869, entitled "An act to enable the banks of the State to resume business, or to place them in liquidation," and is found in the first section thereof as follows: Sec. 1. Be it enacted, &c., that all the banks incorporated by authority of this State, and which have by said authority issued bills of credit known as bank bills, and have failed to comply with said corporate privileges, by refusing to pay their bills of credit, and are now refusing to comply with the provisions of said act of incorporation in this particular, and shall so continue to violate said act, until the first day of December, 1869, shall forfeit all corporate rights and privileges, and are forbidden to transact any business as banking institutions. Provided, *That the redemption of their bills in United States currency, should be deemed the fulfilment of their obligations to the holders of said bank bills.*" 14 Vol., Stat. 212.

Here we have the direct authority of the legislature of the State, saying that the banks have failed; and that said failure shall be excused upon the payment "of greenbacks" to the holders of said bills; "to who liable" to the holders of the bills; "for what liable" for United States currency (money); how liable "in like manner and with like force and effect as upon any private person or persons." Charter, 8 Vol., Stat. 18, Sec. 7.

Yes, but appellants say these liabilities all refer to the corporation, and not to the stockholders; to which answer I reply; has not the legislature already told us that the banks have failed, that the Exchange Bank has forfeited (in right of law) its charter, that the liabilities under the law are due, and that these liabilities shall be satisfied by paying money to the holders of the bills. No increase of the debt was incurred by the failure of the bank, no pecuniary penalty is pronounced in the statute of 1869 to accrue to the State, in case of non-compliance of the banks with its terms; nor is any forfeiture declared in said act against said bank or banks for non-compliance with the terms of said act (except to forfeit all rights and privileges as banking institutions) which would naturally arise from and accrue to the State, and if such liability was a penalty, or that anything was due to the State, the State ought to have exacted or released any penalty or liability that then existed.

Said act set forth the necessary proceedings to be taken by the State against defaulting banks, and said act failed to set forth any action against the stockholders as a penalty of any of the defaulting banks referred to. The reason is obvious.

If the charter of the bank is a contract (as herein contended) and the liability of the stockholder runs for the benefit of the bill holder, or if the stockholder is a co-obligor with the corporation, (in case of failure) and liable to the bill holder for the payment thereof, then any legislation by the legislature varying or changing the status of the parties (the stockholder and the bill holder) would have been extra judicial and void.

The State had no interest in the liability against the stockholders under the charter.

The legislation is perfectly consistent, and the conclusions of law must be irresistible.

50 Georgia Reports, 637.
Andrews & Co. vs. Gwinnett M. Co.

Few authorities are quoted to maintain these positions and points of law insisted on, except the statutes and facts referred to, and it is believed none are needed to be produced before this Honorable Supreme Court, the points of law and the principles involved being settled beyond question in numerous adjudicated cases, which authorities are well known to this Honorable Court.

We next take up the question of the statute of limitations.

The subject matter of this suit is founded upon the bank bills of the Exchange Bank of South Carolina. Bank notes, as we have heretofore shown, are the creatures of statute and are wholly void if made without the statute, and therefore limitations never runs on bank bills.

2 Parsons on Notes and Bills, 95—E.
2 Parsons on Notes and Bills, 643.
13 Georgia, 299, Dougherty vs. Western Bank.

That (as heretofore shown) without the statute, the subject matter herein sued on, would have been a fraud and void; but it was the statute that gave the bank bill life and validity; and it was that same statute that gave the right of action to the bill-holder against the stockholder, that created the right of the corporation to issue the bill.

It was not the fact that the President and Cashier of the Exchange Bank signed the notes sued on that made said notes valid; but it was the fact that the statute had authorized that act to be done by them, that made the notes valid. And that act having been legally performed by said corporation, the bank notes vested in the hands of the bearer under the statute, and the failure of the bank having occurred, the right of action accrued to the bearer of the bill at that date against the stockholders of the bank by force of the statute aforesaid.

The master in the cause having found that the bank failed in 1865, yet the statute could not run on the subject matter in this suit before August, 1866, because no court existed between the time of failure and the date aforesaid in which said action could be maintained, and the right of action having accrued to the bill-holder under the statute, as we have shown, exists for twenty years as a specialty.

11 Georgia, 502, Thornton vs. Lane.
30 Georgia, 773–4, Dougherty vs. Berthune.
30 Georgia, 599, S. 5, 6, 7, and 8, Hargrove vs. Chambers.

The only statute of limitations in existence in South Carolina (previous to the present code, adopted in 1870) is found in 2 vol. Stat.. 583, act 1712, and no part of said act bars a right of action accruing under a statute. But I may here add another feature: Supposing a bank note to be a note of hand, created by the parties signing and circulating the same as a certain and liquidated sum, such writing, by act 1785, (7 vol. Stat., 232, sec. 44,) is declared to be a specialty; and we find among the ancient cases of that day reported that a note of hand made in 1790, suit was instituted thereon in 1814, (two years subsequent to the charter of the Planters' and Mechanics' Bank,) and although the action failed, its failure was not upon the ground of the want of validity, or want of force of the statutes referred to, but upon the plea of payment; and that twenty years had expired before a new promise (by mistake) had been made, and the presumption of law was that said note had been paid.

1 Bay, 440, Ripon vs. Townsend.

These facts may be referred to as explaining the peculiar wording of sec. 7 of the charter hereinbefore quoted, " though not under the seal of the said corporation, shall be binding and obligatory upon the said corporation," &c. Said sec. 7 of said charter is a prominent section thereof, and should be construed consistently with the object sought to be attained thereby. In examining all of the earlier statutes we find that all the bills of credit issued were stamped, sealed, and indented; this fact rendered said bills of credit a specialty, and I think all of the bank charters declare the bills issued, "though not under seal, shall be binding and obligatory," &c.; and this section, in connection with the old statute, consistently construed, would imply that said bank notes were circulated under the author'ty of the statute of incorporation, and were to be valid during the existence of the corporation, as a specialty. The statute upon the statute books of the State seem to warrant that conclusion; the custom and usage of banks and bankers confirm that conclusion, and the rule of law is, that the statute of incorporation shall be construed strongly against the incorporated. This brings me down to the point of time at the adoption of the present code.

If it be true that the liability of the stockholders accrues to the holders of the bank bills at the date of its failure, within what time would the statutes of limitations bar actions upon their liability under the present code of procedure of South Carolina—1870?

Title 2, sec. 114, p. 2, page 591, says "six years"—an action upon a liability created by statute other than a penalty.

Page 593, sec. 131: "This title shall not affect actions to enforce the payment of bills, notes, or other evidences of debt, issued by moneyed corporations, or issued or put in circulation as money."

This latter section, 131, of the code, title 2, specially exempts bank bills from the operations of the statute of limitations; and as the subject-matter in this suit is founded upon the bank bills of the Exchange Bank of

South Carolina, and that said Exchange Bank was a moneyed corporation, and issued said bank bills to circulate as money, said bank bills sued on are not subject to the operations of the statute of limitations under said code, and this action was brought after the adoption of the code.

The able counsel for the appellees, Messrs. Corbin & Stone, having submitted a vast array of authorities, the further submission of authorities on these points is considered superfluous.

This suit is a creditor's bill, brought by J. & T. Green, of Mississippi, for the benefit of themselves and all other creditors of the Exchange Bank in like condition. The proof of the claim of the complainants is shown by the record, page 68.

They are bankers. They took the bills sued on at par in their legitimate business, (except a few dollars,) and are righteously entitled to the payment of their claim proved. The proof in the cause (record, page 63) shows all of the bank bills to have been issued on a specie basis, and circulated upon the public as money.

Harvey Terry, one of the co-complainants, was formerly a banker and broker, and at the close of the war, in 1865, held largely of the bank notes of most of the banks in the South.

That complainant submits that the business of a broker is recognized by law, and that it is a legitimate business; that it is a necessary business for the protection of the public, and ought to be maintained as a benefit to the public.

That his business of buying up the bills of banks, and carrying them in for redemption, was continued up until the year 1871, to a greater or less extent. During these years of his legitimate private business large accumulations of the bank notes now held and owned by him accrued; and as time progressed, and the national currency system became the popular and efficient banking system of the country, it drove out and annihilated the State system of banking, both North and South; and as the national currency became established the hopes of the stockholders of resuscitating the State banks of the South was abandoned, and nearly all of the old State banks, voluntarily or by compulsion, went into liquidation when it became apparent that their charters were worthless.

So was the decline in the price of the bills of almost every bank in the South, until finally no price would be paid by the officers or stockholders of said banks; that a united consent, sentiment, or concert of action, or general understanding became the rule and leading practice of said officers and stockholders, and in consequence of which it became absolutely necessary for the holders of bills of said banks to either bring suit thereon against the corporation and stockholders or to abandon the rights of bill-holders and the right of property therein vested as worthless.

This state of affairs occurred in South Carolina about the time and soon after the passage of the act of March 13, 1869. This act brought the affairs of the State banks to a crisis in which something definite must be done. The act required the banks of the State to resume business on a solid foundation or go into liquidation. Some of the banks resumed business, and some of the banks went into liquidation; and it is of the latter class that I intend to speak here.

Previous to the passage of the act referred to, the banks of South Carolina redeemed their bills at some rate, either through the brokers, or by the officers or agents of the banks; some at 40c, some at 25c, some at

20c, some at other rates on the dollar of the bill redeemed; but upon the passage of the act referred to, a great majority of the banks pursued the defensive policy of *pay nothing;* previous to which time, very few, if any suits against the banks had been commenced in the State; true it is that no suit or suits had been commenced against said banks or any of them by this co-complainant at that date.

In the year 1868, an act was passed placing the "Bank of the State of South Carolina" in liquidation for the benefit of its creditors, the assets of the bank were directed by the courts (3 Vol., Richardson, N. S. 401, 1871–2) to be paid to the holders of the bills, and those who hold the bills are still waiting their dividend.

It was contended that the assets of the bank belonged to the State in preference to the holders of the bills, but the courts decided the bills of the bank were the first obligations to be paid to the holders thereof. The Merchants' Bank of Cheraw, the Planters' Bank of Fairfield, and numerous other banks were placed in liquidation under the act of 1869; but up to this date not one dollar has been paid to the bill holders from the assets, (if any existed) to the holders of bills of said banks; the bank of Georgetown paid from the assets of the corporation a dividend of about 3 per cent. to holders of bills, although it had previously redeemed its bills at from 16 to 25c on the dollar. This state of affairs produced the necessity for the creditors of the defaulting banks to institute legal proceedings against the stockholders of the said banks upon their personal liability, for the payment of said bank bills under the statute. And this co-complainant for these reasons is compelled to bring suits under the statute for the collection of debts due to him, without any regard to political questions, or relations. He seeks to maintain the law. These bank bills have been circulated throughout the length and breadth of this land, upon a specie basis as money, to the amount of many millions of dollars, and stockholders as the beneficiaries of said corporations have realized the specie standard therefor, and have enjoyed the profits and revenues derived from the business; for many years have lived in affluence and luxury upon the increase and funds arising from the franchise granted; and appellants' counsel have in their briefs herein filed publicly boasted that no banks in the country stood so high before the war as the banks of South Carolina.

This being true, shows a greater reason why the stockholders should use extra diligence, and be held to greater accountability; their issues were circulated into the hands of the illiterate, the laborer, the mechanic, the merchant, and the producer, at a specie value for their labor and products, in sums varying from one dollar to thousands, according to the capacity of the parties when the transaction was made.

This state of affairs existed at the failure of the banks, and existed to a greater or less extent up to the time of the act of March 13, 1869. And the stockholders of the several banks of the State to a great extent not only refused to provide for and redeem the bank bills so issued, but decried against and depreciated said bank bills until they have become of little or no market value; and said stockholders have endeavored to so mould public sentiment that it was unpopular and below the dignity of the true confederate, to sell, dispose of, or bring suit upon the bank bills of said defaulting banks. That to do so was to incur the popular displeasure, and to be taunted with the want of fidelity to the South, and in many cases to incur a social ostracism.

This co-complainant being the owner of a large amount of the bank bills of various banks of South Carolina at that date, endeavored to obtain settlements and compromises for his bills even at low rates, and in some cases at less than half the cost of the bills; but no settlement or compromise was effected, and therefore suit was reluctantly instituted against the stockholders of several banks to enforce the statutory liability of said stockholders to pay the bank bills of said banks; the choice being between a long and severe litigation on the one hand; or the entire loss of the property vested in the bills. This co-complainant denies that he is now or that he ever has been a speculator for the purposes of buying up claims upon which to bring suit. This co-complainant has united his claims with others in some suits, in the form or upon the principle of a creditor's bill, and is unable to perceive why the same is improper or unjust. But the appellant's solicitors tell us that the losses of the Exchange Bank was occasioned by the war, and upon that ground they seek to be excused from the payment of their liabilities arising under the statute of incorporation.

If that principle of law was to prevail, or if the facts upon which the statement was made were true, all persons who had incurred loss by the war, who were indebted, would be absolved by that fact, from payment of their debts. But this co-complainant was not engaged in the war, had no sympathy with the war, and was opposed to it; and if said corporation and its stockholders did give aid and comfort to the enemies of their government, and did sacrifice the property of the corporation thereby, this co-complainant holds that fact to be an additional reason why said stockholders, ought to be held personally liable under the statute upon the trust reposed in them for the benefit of the public.

3 Howard 333, Oliver v. Piatt.
2 Washington C. C. 441, Phillips v. Crammond.
3 McLean 27, Piatt v. Williams.
6 Wheaton 481, Prevost v. Gratts.

Mere Volunteer Speculators Entitled to no Consideration.

McCrady and others brief, 44:

> "If indeed, it were so, as the complainant in this case insists, that the liabilities of the stockholders, under the provisions we have been construing, was in the nature of a contract between the stockholders and the bank and the holders of bills of credit, he is entitled to no consideration from this court.

This plea or argument might have some force if founded in fact, or if founded upon the principles of law applicable in this suit. This co-complainant positively denies that he set out with the intention and bought up the bills of any bank in South Carolina purposely to institute a suit thereon, and submits that there is no evidence in this case or in any other case to warrant any such assertion, and the present suit or any other creditors' bill to close up and effect the final and complete payment of debts authorized by law, as in this present suit, are not analagous to personal transactions. The bank's charter exists *defacto*.

Ahrens vs. State Bank, 3 Richardson, S. C., 401; N. S., 1871-2.

The circulation of a bank note, although below par, does not render its transfer illegal.

Byles on Bills, 80, * 182.
Byles on Bills, 339, * 204.

The holder who does not take a bank note as money, but who purchased it at a discount according to its market value, is a part of the public and entitled to rely on his security.

Johnson vs. S. W. R. R. B. K., 3 Strobhart Eqt., 351.
Robinson vs. Beale, 26 Georgia, 27.
Furman vs. Nichol, 8 Wallace, 50.
Woodruff vs. Trapnel, 10 Howard, 206.

A creditor's bill is a single suit for the benefit of all persons in like condition, to wit: the holders of the bills of the corporation, and to prohibit the transfer, sale, or purchase of the bills, either before or after suit, is to impair the value of the bill or note in a holder's hands, and practically to defeat his rights, (particularly the weak and dependent, of whom the law more especially was designed to protect,) because the weak and dependent holder could not, and in fact dare not, engage in such a litigation. The number of suits are not increased in a creditor's bill whether the complainant files a claim for $1,000 or $10,000. Neither is the aggregate amount of debt proved in a creditor's bill either increased or diminished by the purchase and sale of the bank bills sued on; but such free transfer and sale does give greater value to the holders of small sums of bank notes, by making a market value therefor, who would not and could not unite in a suit, and does prevent to that extent the said stockholders, after years of defence and delay, from taking the advantage of their own wrong at a mere nominal cost. A large amount of the bills proved by the stockholders in this present suit was bought at a nominal sum, far below the price paid by this co-complainant for any of his few bills proved in the cause; yet no opposition or defence is made by said McCrady and others to the bills proved by said stockholders in said cause, and no exceptions to the master's report filed on that ground.

If it was unjust or illegal for this co-complainant to buy his bills in proof, it was equally so for the stockholders to buy their bills, in proof in the cause; but complainant submits that his right to purchase said bills accrues under the statute, and what accrues under the law is defended by the law.

And beyond the law arises an equity that is due to the poor, weak, and illiterate public. They of all others ought to be paid in full. But if that is impracticable, do not divest their rights on account of their poverty, but allow them to sell their bills at some market value, without divesting the rights of the purchaser. To allow such plea is to allow the stockholders to take advantage of their own wrong and solemn obligations due to the public; it is to allow a kind of repudiation of liabilities accruing under statute for the benefit and protection of the public; it is to allow the issues of banking corporations, issued into the hands of the widow, the orphan, the laborer, the mechanic and farmer, to become worthless and of no value. It is a plea, in the name of law, seeking to destroy that principle of security upon which the national currency act of the nation is based, (12 U. S. Stat. at Large, 668, sec. 12,) and brings into disrepute and distrust the statutory enactments of the land. And in order to make such plea respectable and available, what do we find—a single party or solicitor making his own plea in his own cause or that of his client in court? No, but no less than eleven persons and law firms uniting in one brief, and unitedly presenting the same in a cause, (in which it is believed they have no client,) in order to give respectability to their plea, and weight and influence in the argument of a suit in which they have no direct interest. That this co-complainant is a member of the Supreme Court of the State from which he comes, but not admitted to practice in the circuit courts of the United States, by reason of the probation necessary, under the rules, for admission. That in the United States Circuit Court for the district of South Carolina, at its last session, some of the parties to said brief appeared as solicitors in that court in opposition to a creditor's bill brought by this co-complainant on behalf of himself and all others in like condition. Said solicitors moved that complainant be barred from conducting his own suit (creditor's bill) upon his own behalf, upon the ground that complainant was practicing law in that court without a license or permission to do so, by representing the interests of other parties in like condition (who may or may not come into court) as parties to said bill; and the judge presiding refused to allow this co-complainant to act in his own cause, and to file papers, answer pleas, or issue process, or do anything in said suit. That said solicitors then proclaimed that this co-complainant should not receive the courtesies of the profession at their hands, but that it was war, legal war, to the knife; that said co-complainant ought to be driven from the courts in disgrace, because he was pursuing and prosecuting poor, innocent stockholders of the broken banks, whose failure was caused by the war; and we find this same attack followed up in this court in a milder form and in language less bitter, but none the less significant, in the brief referred to. If this co-complainant is thus set upon by the profession, (in a court of justice which they have sworn to uphold, protect, and maintain,) from their sympathies in the lost cause, and the courtesies of the profession are lost in partisan bitterness, what would be the fate of a poor and defenceless creditor who sought to enforce his rights in a legal tribunal in a community composed principally of the elements of said lost cause? That question need not be answered. The facts are that no suit has been instituted in the whole country, to the knowledge of this co-complainant, by persons in moderate circumstances, because such temerity could only expect annihilation. The war, and the spirit of the war, and the combinations of the war, have not yet died out, but do herein appear; and woe betide the poor and unprotected, the weak and defenceless, that run counter to its spirit and in opposition to its champions, unless ably defended. But it is claimed that the stockholders are poor. If that be so, an execution will do them no harm. If they be rich, then why not pay their liabilities in conformity to the law, upon whose bounties they lived and flourished for many years.

Conclusions of Law.

1st. That the natural construction of the statutory liability of the stockholders of the Exchange Bank is, that the said statute was enacted for the benefit of the creditors of the bank; and, in case of its failure, to insure the payment of its bills of credit to the holders of the bills.

2d. That by act of March 13, 1869, sec. 1, in the last clause thereof, the legislature has specially shown what shall constitute a fulfillment of the obligations of the bank, and to whom these obligations shall be paid, to wit, "to the holders of said bills."

3d. That the liability of the stockholders in case of failure is not an asset of the corporation, nor is such liability a fund, security or trust, that could be collected or applied by the corporation for the payment of its corporate debts; such liability being exclusively for the benefit of, and accruing to the creditors of said bank.

4th. That by act of March, 1869, the legislature of South Carolina directed the proper judicial proceedings to administer upon and dispose of the assets of the corporation for non-compliance with its chartered rights and duties; but in said act of administration, no penal sum is sought to be enforced against either the corporation or the stockholders upon their statutory liability; and as the act directed the administration of all of the assets and extinction of said bank, said act should have directed the exaction of all penalties, and the collection of all penalties due from the corporation or stockholders to the State, if any existed.

5th. The legislature having directed the administration of the assets of said corporation because of failure, and the said legislature having failed to direct the enforcement of any penalty or *ex delicto* liability against either the corporation or stockholders, the presumption of law is that no such penalty or *ex delicto* liability existed; that if any such liability did exist the legislature should have provided for its enforcement or released its obligation.

6th. That the liability of the stockholders of the Exchange Bank is a liability accruing under the statute before the adoption of the present code of proceedure, and that a liability accruing under statute is not included in the acts of limitations previous to the adoption of the present code of South Carolina.

7th. That the liability incurred by the subject-matter in suit was bills or notes put in circulation as money by a moneyed corporation, and that said liability is specially exempted by the present code from the operation of the statute of limitations. Code 593, sec. 131.

8th. No exceptions to the master's report is in question in this cause, therefore no question passed upon by the master can be heard here.

HARVEY TERRY,
Co-complainant.

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